

USA v. Jenkins, 3:23-cr-11, 12/18/2024

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF VIRGINIA
3 CHARLOTTESVILLE DIVISION

4 UNITED STATES OF AMERICA, CRIMINAL CASE NO.: 3:23-CR-11
5 DECEMBER 18, 2024, 9:06 A.M.
6 Plaintiff, CHARLOTTESVILLE, VIRGINIA
vs. JURY TRIAL, DAY 6

7 SCOTT HOWARD JENKINS, Before:
8 Defendant. HONORABLE ROBERT S. BALLOU
WESTERN DISTRICT OF VIRGINIA

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1 (Proceedings commenced, 9:06 a.m.)

2 THE COURT: Good morning, everybody. We're back on
3 the record in *United States v. Jenkins*. Let the record reflect
4 that the government is present by its counsel. The defendant
5 likewise is present by counsel.

6 We're giving you -- they're the same instructions.
7 I've just reordered them. And up through page 35 or so are the
8 general instructions. Those are the only ones that I really
9 reordered. The others are all in the same order, same
10 instruction. I see that there are a couple of -- a couple of
11 other instructions -- couple of other matters that the
12 government has put up here. So we'll address those as we go
13 along.

14 Before we get to the instructions, is there anything
15 we need to address from the government's standpoint, Ms. Choy?

16 MS. CHOY: At some point, Your Honor, we would like
17 to address the juror note from last night.

18 THE WITNESS: Okay. I want to do that as well.

19 Mr. Andonian, anything else you think we have on our
20 list today?

21 MR. ANDONIAN: Yeah, just addressing the juror note
22 at some point as well.

23 THE COURT: Right. Okay. Let's do that now. There
24 are fewer rather than more people in here at this point in
25 time. I've received a number of notes from the jury. Some of

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1 them are speak up, that kind of thing. I haven't passed them
2 all along. The ones that are substantive I've passed on to you
3 all. I think that they're all -- I don't know whether they
4 come from the same person or not. This one is not signed. We
5 don't know who gave it. My research last night really hasn't
6 shown that there's any type of protective order. I think it's
7 all -- the law is well-settled that no one can take the
8 information that's in a juror questionnaire and use it for
9 mal-intent. That's certainly for sure. The juror
10 questionnaires are confidential. We've told them they're
11 confidential. When they go out, they are confidential.
12 Certainly they're intended for the parties to be able to
13 conduct the type of investigation that they need to be able to
14 have an efficient and an effective voir dire process and be
15 able to exercise your discretion with respect to the peremptory
16 strikes.

17 There wasn't a request here -- and I don't really
18 think necessarily we need to have -- you know, that we would
19 have needed to have any type of anonymous jury. So I'm not
20 worried about -- you know, amongst the parties -- the
21 questionnaires being used for any type of mal-intent. My
22 question is, what, if anything, do we tell the jury in response
23 to this. So I'll take any guidance, recommendations from you
24 all.

25 Ms. Choy?

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1 MS. CHOY: From our perspective, the first step would
2 be to find out more information about what the answer to the
3 juror's question is, whether the defendant did review those
4 jury questionnaires, and whether he has ongoing access to or
5 possession of those jury questionnaires. And the answer to
6 that question would inform what, if anything, we could tell
7 that juror. So our request would be that the Court first
8 determine the answer to those questions.

9 THE COURT: Mr. Andonian, do you want to address
10 that?

11 MR. ANDONIAN: I do, Your Honor. And it's a little
12 tricky, because we're obviously trying to stay away from
13 attorney-client communications.

14 THE COURT: Sure.

15 MR. ANDONIAN: Here's what I can represent. We
16 didn't give Mr. Jenkins the questionnaire -- the
17 questionnaires, I should say. Mr. Jenkins was here and
18 actively engaged in the jury selection process, and was
19 reviewing materials here in open court that we were reviewing.
20 He doesn't have the questionnaires. From our perspective, I
21 don't know that that necessarily -- I agree with Ms. Choy that
22 it gets us to step two, which is what do we tell the jurors?
23 And we have some fairly serious concerns about the implications
24 of that note, and whether or not -- was it from the entire
25 jury -- everybody in the box? Was it one juror in particular

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1 that was expressing their own concerns, and is there now a
2 potential problem with the juror being able to be fair and
3 impartial if they are worried or they think there's some
4 repercussions coming, which seems to be the implication of that
5 note. So I think obviously we agree, we have to -- we have to
6 say something about it, but it might be that we need more
7 information from the jury itself about who raised that concern
8 and whether or not we need to ask questions about whether there
9 is a problem now --

10 THE COURT: Right.

11 MR. ANDONIAN: -- with impartiality.

12 THE COURT: And so at least from the standpoint of --
13 and maybe this is -- this is a starting point. Let me address
14 it this way. So my concern was that anything that I tell the
15 jury at this stage before they deliberate, I don't want to have
16 an impact on their deliberations. I don't want the jury to be
17 told one thing or the other that then has a juror take that
18 into consideration as to whether they -- as to what decision
19 that they make, that they hear a response to this question, and
20 then they get mad at the defendant and therefore convict him,
21 or they hear a response to this question and they become
22 fearful and therefore acquit him. Right? We want the decision
23 that the jury makes to be based solely upon what happens in the
24 four corners of -- within the four walls of this courtroom.

25 And it sounds as though, one, Mr. Jenkins does not

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1 have copies of the questionnaires -- and certainly, you know, a
2 straightforward answer to the -- to the question is certainly a
3 defendant is able to participate with his counsel in the
4 selection of the jury process, but that -- and maybe the way to
5 formulate an answer to this -- and I'm thinking out loud as I
6 speak, which is probably a dangerous thing -- is along the
7 lines of the parties, both the agents for the government, as
8 well as the defendant, are able to participate actively with
9 their counsel with respect to the jury selection process,
10 including being aware of those people who are potential jurors.
11 The information that is provided during the voir dire process
12 through the forms of questionnaires is confidential, for use by
13 the parties, and use by the parties only for that purpose, and
14 that any use of that information outside of this -- of this
15 proceeding is absolutely prohibited. And if there's any
16 violation of that, it's going to be brought to the Court's
17 attention promptly -- something of that ilk.

18 MS. CHOY: So Your Honor, the case that we found that
19 may give some guidance is *United States v. Smith*, 919 F.3d 825.
20 And what that case says is that if a, quote, serious
21 non-speculative question of juror impartiality arises during
22 trial, the district court must determine whether the affected
23 juror has remained fair and impartial.

24 So -- and our front line position is that this
25 question that's been raised isn't serious and non-speculative.

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1 It's just a sort of general --

2 THE COURT: It's a general question.

3 MS. CHOY: It's not anything specific. They didn't
4 express what their concern was about these jury questionnaires.
5 And so there's no reason to think that this jury is not fair
6 and impartial.

7 If Your Honor were to disagree with that conclusion,
8 I think *Smith* again gives some guidance, which is that any
9 instructions that are to be given, any response, should be kept
10 as narrow and as generic as possible so as to avoid tainting
11 the pool or suggesting that this is an issue that they should
12 give attention to, when maybe it isn't.

13 So if Your Honor disagrees that this is not serious
14 or non-speculative, then I think the first step would be to
15 determine whether that concern was raised by only one juror or
16 if it's the whole panel. And if it's only one juror, then the
17 appropriate response would be to bring that juror in
18 individually and to ask very generic questions of them about
19 their ability to be fair and impartial without sort of directly
20 addressing this possible concern that was raised.

21 The questions that were asked in *Smith*, which our
22 Ms. Smith has sent to you by e-mail -- first of all, it was
23 question one: When we last spoke during the jury selection
24 process, you told me that you believed you could be a fair and
25 impartial juror. Has anything occurred since we last spoke

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1 that would cause you to change your answer to that question?

2 And then if we discover that this question has been
3 percolating through other members of the jury, also question
4 too: Since you began to serve on the jury, has anything been
5 said or overheard by you in the jury room that would affect
6 your ability to be fair and impartial?

7 And if the answers to those questions are no, then
8 our view would be that resolves that issue, that we've -- that
9 jurors have reaffirmed that they can be fair and impartial, and
10 there's no further concern and nothing further would be
11 appropriate.

12 THE COURT: All right.

13 MR. ANDONIAN: Your Honor, I don't disagree. I think
14 just having heard it right now with what Ms. Choy suggested
15 about the process of voir diring an individual juror, if that's
16 what we decide.

17 I do want to push back, though, on this notion that
18 this is not a serious note. I mean, there's not a soul in this
19 courtroom who read -- who is hearing that note and is not
20 thinking about the implications behind it. I mean, I doubt the
21 jury is concerned about what reading material Mr. Jenkins might
22 or might not have, you know, that he's perusing on a Sunday
23 morning. I mean, they clearly -- whoever wrote that note and
24 whoever it's on behalf of clearly has concerns about whether or
25 not Mr. Jenkins has access to personal information that can

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1 identify them. I mean, there's just not a logical, rational
2 way to explain that otherwise.

3 THE COURT: Well, the question about the
4 questionnaires -- and so the personal information to where the
5 jurors can be identified, I mean, that's on the jury list and
6 so forth that -- I suspect it may be more -- because we were
7 asked -- we asked them some questions with the expectation that
8 they would be candid about any views that they had about
9 certain topics, and whether if a person came onto the jury that
10 had some views that were not -- that they worry that a
11 defendant or anyone could be -- would be contrary to whether
12 that would have any impact on them.

13 So maybe the way to do it is I reread the note. It's
14 written in the first person, it's not written in the -- first
15 person singular. It's not written in the first person plural.
16 It's using the word "I." So my hope is that it is from a
17 singular juror. I want to figure out the right way to identify
18 that person and then have them come out, because the CSO who
19 got the note is not here today, so I can't ask him. And I'm
20 not sure that whoever -- I mean, it could have been someone who
21 is sitting all the way down at the end of the table who said,
22 you know, can you pass this up and give it to the CSO when they
23 come in. So just because juror so-and-so gave the note to the
24 CSO doesn't mean it's that juror's note.

25 So would you all have any -- I guess I can bring the

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1 juror out and say, I got a note at the end of the day yesterday
2 raising a question from a specific -- what appears to be a
3 specific juror, and whether that note is -- is it a question
4 from the group or is it a question from an individual.

5 I mean, I think you agree, Mr. Andonian, that if
6 we're going to -- if it's a serious note, the right thing to do
7 is to try to voir dire that juror and make sure that --

8 MR. ANDONIAN: Yes, Your Honor.

9 THE COURT: And the only difference in you all's
10 positions is whether we need to go to that step, as I'm
11 understanding you, Ms. Choy?

12 MR. ANDONIAN: I think the only -- the only question
13 I would add to what Ms. Choy suggested would be whether or
14 not -- if we are able to identify one juror, if that juror
15 shared any concerns with other members of the jury. But
16 otherwise, I agree with Ms. Choy's --

17 THE COURT: Ms. Choy?

18 MS. CHOY: Our view remains that this isn't serious
19 and non-speculative, but we understand the defense has a
20 different view. So if we are going forward, yes, we think we
21 should try to find out from the CSOs who that note was from and
22 then ask that person further.

23 THE COURT: The problem is that CSO is not here.

24 MS. CHOY: Well, perhaps the CSOs who are here could
25 pose that question to the jury.

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1 THE COURT: All right. Let me think about it, about
2 what's the right thing to do. I think the safest thing to do
3 is to bring the juror out and voir dire them. But even if I do
4 that, I mean, whether I bring him out and voir dire him and
5 assume -- regardless of what the juror says, if they don't
6 think they can be fair and impartial, we have two alternates.
7 It makes it easy. If they think they can be fair and impartial
8 and can still sit, you know, do we then give any type of
9 instruction then to the jury as a whole as well?

10 Go ahead, Ms. Choy.

11 MS. CHOY: I think the only issue that the Court
12 needs to determine is whether the jury remains fair and
13 impartial.

14 THE COURT: Right.

15 MS. CHOY: And I worry that giving some instruction
16 to the jury as a whole would taint the pool or put a question
17 into their mind where none needs to be. So if we can assure
18 ourselves that they're fair and impartial, then that should be
19 the end of the story.

20 THE COURT: Mr. Andonian?

21 MR. ANDONIAN: I mean, I think that's right. I mean,
22 I think if it's an individual juror, we can ask the questions
23 of that juror, make sure they haven't discussed the note with
24 the rest of the jury, and then make a decision about what to
25 do. If that juror ends up not being fair and impartial

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1 anymore, I mean, the jury can get some generic, you know,
2 instruction, that you know, somebody had a personal issue come
3 up or whatever. That could be dealt with easily enough. But I
4 do -- I think I agree that we should just figure out what's
5 going on with hopefully this one juror and then that question
6 should resolve itself one way or the other.

7 THE COURT: All right. Let me think about how best
8 to do that, because the other thing that I could do -- and I
9 would only do it with the Court's permission -- is once the
10 jury is there, is I could step back into the jury room and say,
11 I got a note last night what appears to be from a single juror.
12 Can I talk to that juror? And bring them out. Or I could have
13 the CSO step in and say, there was a note given to the CSOs
14 last night from a juror, and the Court has some questions about
15 it. That may be the best. I don't want to bring the entire
16 venire out and then send all but one back in.

17 MS. CHOY: We agree with that. And if I wasn't clear
18 about -- that was what I was proposing earlier, that I don't
19 think it would be appropriate to sort of single someone out in
20 the jury box, but that that inquiry should be made back in the
21 jury room in a more informal basis that wouldn't call people's
22 attention to it so much.

23 THE COURT: So I may -- okay. Howard is here. So
24 I'll talk to him when we get to the break as well.

25 All right. So let's -- let's look at our jury

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1 instructions real quick. So what I've given to you are
2 essentially, as I said, the same instructions that we had. A
3 couple questions that we -- that are out there -- and I see the
4 government has given us some more information on honest
5 services. And then I have removed from this group of
6 instructions the instruction that the defendant has a right to
7 remain silent, has no burden to put on any evidence, since the
8 defendant testified. And then I've left the page numbers on
9 there, but I've reordered. And then I've got a set of
10 instructions up here that as we go through, I'm just going to
11 put instruction numbers on them so that when we get done with
12 this process, we're going to have 1 through -- I think it's
13 about 60-some instructions. And then we'll be able to make --
14 make copies of them for you with the instruction numbers on
15 them. My thought would be that we'll then finish up the
16 redirect of Mr. Jenkins, go into any rebuttal, if any, that the
17 government may have, take a break for any motions that we may
18 have, let you all collect your thoughts. I'll read the
19 instructions to the jury. I'll then take a break before we go
20 into closings, and then go straight to closings. Depending
21 upon what time it is, before we go to closings we'll either let
22 them break for lunch or we'll go straight to closings, and let
23 the jury deliberate, and we'll feed them lunch and we'll see
24 where they are for the rest of the afternoon.

25 MR. ANDONIAN: Your Honor, can I ask just a quick

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1 logistic question while we're talking about the rest of the
2 day? What is the Court's policy or procedures in terms of
3 deliberations and how late they go?

4 THE COURT: They are the captain of the ship. If
5 they want to stay here all night, they can stay here all night.
6 And if they want to go home at 6, I'll let them generally go
7 home at 6. If -- you know -- what I -- if a jury goes out at
8 4:30, I don't necessarily let them go home at 6. I kind of sit
9 on it and then I touch base with them around 7. Do you want
10 dinner? Do you want to keep going? Do you want to go home, or
11 whatever. I think letting the jury have control as much as
12 possible leads to more efficient deliberations to where they
13 don't feel like they've been completely just stuck in a room
14 and told they can't leave and they don't have any control over
15 when they can come and go.

16 MR. ANDONIAN: And in terms of our kind of response
17 back to the Court if there were a verdict or a note, if that
18 happened at like 10:00 at night, is the expectation that we
19 would deal with it the next morning, or that we would --

20 THE COURT: I'd take it that night, you know, because
21 the jury is there. You don't want them to leave and come back,
22 and then someone have re-thought their verdict, and then you've
23 got to start back up again.

24 MR. ANDONIAN: Okay. We're just trying to figure
25 out -- Mr. Jenkins lives, you know --

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1 THE COURT: Yeah. So a lot of that we'll play it by
2 ear. And it may be that, you know, if they've been going for
3 seven, eight hours and they think they can finish, great. If
4 they don't think they can finish, then we'll play it by ear.

5 MR. ANDONIAN: Very well, Your Honor.

6 THE COURT: All right. So let's go through the set
7 of instructions that I gave to you.

8 Members of the jury -- that will become instruction
9 number 1. No objection from the government?

10 MS. CHOY: No, Your Honor.

11 THE COURT: No objection from the defendant?

12 MR. CALEB: Your Honor, you're looking at the one you
13 just gave us this morning?

14 THE COURT: What I just gave to you, yeah.

15 MR. CALEB: Okay. No objection.

16 THE COURT: Okay.

17 MR. CALEB: But I will have to go back and forth
18 because I made comments on the one we had yesterday -- if you
19 changed the page number.

20 THE COURT: Okay. There aren't many that are in
21 different orders.

22 MR. CALEB: Okay.

23 THE COURT: So instruction number 2 begins with:
24 There are three important rules.

25 No objection -- I'm hopeful there aren't a lot of

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1 changes to these, because what we got in red lines back from
2 you guys, so --

3 MR. CALEB: There aren't a lot of changes. I just
4 did notice a couple of things that may need to be tweaked,
5 but --

6 THE COURT: All right. Instruction number 2 will be,
7 there are three important rules.

8 No objection from the government?

9 MS. CHOY: No, Your Honor.

10 THE COURT: No objection from the defendant?

11 MR. CALEB: No.

12 THE COURT: Instruction number 3, the burden is on
13 the government to prove the defendant guilty beyond a
14 reasonable doubt.

15 No objection from the government?

16 MS. CHOY: No, Your Honor.

17 THE COURT: Any objection from the defendant?

18 MR. CALEB: No.

19 THE COURT: Instruction number 4, the government is
20 required to prove the defendant guilty beyond a reasonable
21 doubt.

22 Any objection from the government?

23 MS. CHOY: No, Your Honor.

24 THE COURT: Any objection from the defendant?

25 MR. CALEB: No.

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1 THE COURT: Okay. This one may have been in a
2 different order.

3 MR. CALEB: Yeah, it was.

4 THE COURT: Instruction number 5 -- let me -- because
5 I have them -- I have the ones that were numbered. I can help
6 you, Mr. Caleb, in that regard. These things all become a
7 flurry of paper, don't they?

8 MR. CALEB: Your Honor, if I could just make a
9 suggestion?

10 THE COURT: Yes, sir.

11 MR. CALEB: There were a couple of instructions that
12 I thought the language may need to be tweaked. Maybe I could
13 point those out using the page number --

14 THE COURT: Okay.

15 MR. CALEB: -- of the version that was given to us
16 yesterday.

17 THE COURT: All right. Let me -- I think we're going
18 to be able to go through it fairly easily as well.

19 MR. CALEB: Okay.

20 THE COURT: So what is instruction number 4 was page
21 33. What will become instruction number 5, you are here to
22 decide, was page 9, Mr. Caleb.

23 MR. CALEB: Okay.

24 THE COURT: Instruction number 5, any objection from
25 the government?

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1 MS. CHOY: No, Your Honor.

2 THE COURT: Any objection from the defendant?

3 MR. CALEB: No. No, Your Honor.

4 THE COURT: Instruction number 6, if a defendant
5 elects to take the witness stand to testify in his own defense,
6 that was page 8.

7 MR. CALEB: No objection.

8 MS. CHOY: Your Honor, on this one, I apologize, I
9 may have neglected to red line this.

10 THE COURT: Okay.

11 MS. CHOY: But the government would request that the
12 last sentence be modified to say, you should judge and
13 determine the defendant's believability as you would any other
14 witness with an interest in the outcome of the case. And the
15 reason for that, Your Honor, is that there are a series of
16 instructions commenting on the government's witnesses and their
17 interest in the case, and instructing the jury to evaluate
18 their testimony with heightened care and caution. And given
19 that the defendant, of course, has an interest in the outcome
20 of the case, we think to have a balanced instruction, the jury
21 should be instructed that they should evaluate his testimony as
22 they would any witness with an interest in the outcome of the
23 case, similar to the government's witnesses.

24 THE COURT: Mr. Andonian -- I'm sorry -- Mr. Caleb,
25 excuse me?

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1 MR. CALEB: So I didn't hear the adjustment.

2 THE COURT: That last sentence would read, you should
3 judge and determine the defendant's believability as you would
4 any other witness, and then it would strike, in this case, and
5 put, with an interest in the outcome of this case.

6 MR. CALEB: Your Honor, we propose it just remain the
7 same. And I think that's consistent with the presumption of
8 innocence.

9 THE COURT: I'm looking for the witness credibility
10 instruction.

11 So why is this not addressed, Ms. Choy, with respect
12 to the instruction that's about five back -- because mine
13 doesn't have page numbers on it. It's the three-page
14 instruction that deals with the credibility of witnesses and so
15 forth, and it says, in considering the testimony of witnesses,
16 you should ask yourself whether there is evidence tending to
17 prove -- I'm sorry --

18 MS. CHOY: Which page are you on, Your Honor?

19 THE COURT: It is -- I didn't print mine with --
20 since I was numbering them -- it's a three-page instruction.
21 So it's about four or five back from where we are. It begins
22 with, the evidence in the case before you is consistent --
23 testimony from witnesses -- it's the credibility of witnesses
24 instruction. You may consider the witness's ability to observe
25 the matters, blah, blah, blah. And this is on the second page

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1 of it. You may also consider his or her interest in the
2 outcome of the case and any bias or prejudice, and the extent
3 to which if any and all each witness is either supported or
4 contradicted by other evidence in the case in evaluating --
5 (Reporter clarification.)

6 THE COURT: So in other words, it's that portion of
7 the instruction that tells you, take a look at the interest in
8 outcome in the case.

9 MS. CHOY: Well, the reason being that as to the
10 government's witnesses, their interests are specifically called
11 out in the instruction, and we're not simply relying on the
12 blanket credibility instruction for our witnesses. So in order
13 to be even handed, the same interest should be specifically
14 pointed out as to the defense.

15 THE COURT: But that's only certain of the
16 government's witnesses. It's not all of the government's
17 witnesses. It's only those that have particular
18 characteristics, and that is that they have pled guilty to
19 crimes and are more than just a convicted felon. They have
20 cooperating agreements, plea agreements, whatever they may be;
21 whereas here this defendant is no different than any other
22 party in the case. And they're told -- the witnesses are
23 told -- I mean, I'm sorry -- the jury is told to take a look at
24 the evidence or listen to the witnesses and evaluate their
25 credibility based upon their interest in the outcome of the

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1 case.

2 MS. CHOY: Well, our view is the defendant himself is
3 not just any old defense witness and it wouldn't be an
4 instruction that applies to all defense witnesses. There is a
5 very, very specific concrete and obvious interest that the
6 defendant has in the outcome of this case. And given that
7 we're singling out certain government witnesses based on the
8 same characteristic, that they have some interest in the
9 outcome, then that should be applied to both sides, if there is
10 a defense witness who has an interest in the --

11 THE COURT: But isn't it a correct statement of
12 law -- I mean, what I'm worried about -- and this is what the
13 defendant says -- is that it is a correct statement of the law,
14 you evaluate them as any other -- as any other witness in the
15 case, taking into consideration their interest in the outcome,
16 right?

17 MS. CHOY: That's correct. And that would also apply
18 to the government's witnesses, that the jury has been
19 instructed they should take into account the interest they
20 have, the whole circumstances. But as to the government's
21 witnesses, we're specifically calling them out, and we're
22 specifically drawing the attention to the jury to these
23 characteristics. So there's an imbalance in --

24 THE COURT: But the law treats that differently. The
25 law treats those differently. The law specifically says that

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1 we can instruct a jury certainly, for example, like with
2 respect to a convicted felon, you can -- how you can treat
3 that. But I can't tell a jury -- because I don't tell the jury
4 anywhere else in the case that you treat the defendant any
5 differently than anyone else who may testify, other than
6 generally how they evaluate witnesses. And so I'm putting my
7 thumb on the scale, am I not, because I'm suggesting to the
8 jury that they should treat Mr. Jenkins's testimony differently
9 than they would treat any other witness.

10 MS. CHOY: Respectfully, I disagree. And the
11 instruction that we had proposed originally that has that
12 instruction is a pattern instruction. And it's not treating
13 the defendant any differently. It's treating him the same in
14 that his interest in the outcome of the case, like any other
15 witness, should be considered by the jury.

16 THE COURT: Okay. Well, I'm going to overrule the
17 objection.

18 MS. CHOY: Very well. Thank you, Your Honor.

19 THE COURT: Okay. The next instruction begins with,
20 I instruct you to find the defendant guilty of the crimes
21 charged -- that if you find the defendant guilty of the crimes
22 charged. And this will be instruction number 7.

23 Any objection from the government?

24 MS. CHOY: No, Your Honor.

25 THE COURT: Any objection from the defendant?

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1 MR. CALEB: No, Your Honor.

2 THE COURT: Next instruction, you've heard -- this is
3 your 404(b) instruction. It would become instruction number 8.
4 Do we even need this instruction given the way in which the
5 evidence has come in in this case? The instruction is, you've
6 heard evidence that the defendant committed certain acts which
7 may be similar acts charged in a superseding indictment. There
8 is some suggestion that Mr. Jenkins may have taken some
9 campaign donations and sworn some folks in prior to 2019, which
10 I guess were near the 2015 election, but it wasn't really
11 focused on. There is certainly no interim instruction. Do we
12 even need this instruction?

13 Ms. Choy?

14 MS. CHOY: I would agree that it could be stricken,
15 Your Honor, because I don't think that that evidence came in
16 under rule 404(b). I think it's intrinsic evidence.

17 THE COURT: Mr. Andonian -- or Mr. Caleb, excuse me?

18 MR. CALEB: That was one of my edits, Your Honor.

19 THE COURT: So let's take out that instruction.

20 All right. So then what will become instruction
21 number 8 begins with, the evidence consists of -- 1 or A, the
22 sworn testimony of the witnesses.

23 Any objection from the government?

24 MS. CHOY: Yes, Your Honor.

25 THE COURT: Any objection from the defendant?

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1 MR. CALEB: Just a slight edit just to be consistent
2 with the amount of stipulations. That paragraph that starts, a
3 stipulation --

4 THE COURT: Should be stipulations of fact?

5 MR. CALEB: Yes. And then maybe instead of certain
6 facts in this case may have been stipulated, replace that with
7 there were two stipulations, or just focusing in on the amount
8 of stipulations.

9 MS. CHOY: I'm sorry, counsel. I didn't quite follow
10 that. Could you say that again?

11 MR. CALEB: So that paragraph that starts with, a
12 stipulation to a fact, so that second sentence. It says,
13 certain facts in this case may have been stipulated to. If we
14 could just be specific and say, there were two stipulations
15 agreed to in this case, or something like that.

16 THE COURT: So the way it would read is -- that first
17 full paragraph would read, stipulations to a -- stipulations of
18 fact -- or stipulations -- why don't we say, stipulations are
19 an agreement between the parties that a particular -- that
20 particular facts are true. There were two stipulations in this
21 case, period. Wherever the attorneys on both sides of the case
22 have stipulated and agreed, and continue on from there.

23 So let me read it again. Stipulations are an
24 agreement between the parties that particular facts are true.
25 There were two stipulations in this case. Wherever the

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1 attorneys on both sides of the case have stipulated or agreed
2 as to the existence of a fact, you must accept the stipulation
3 as evidence and regard the fact as proved.

4 MS. CHOY: That's fine by the government.

5 MR. CALEB: That's good.

6 THE COURT: Okay. So that will be instruction number
7 8 as modified.

8 Instruction number 9 would be, there are two types of
9 evidence.

10 Any objection from the government?

11 MS. CHOY: No, Your Honor.

12 THE COURT: Any objection from the defendant?

13 MR. CALEB: No objection.

14 THE COURT: Instruction number 10 will be, while you
15 should consider only the evidence in this case you are
16 permitted to draw reasonable inferences.

17 MS. CHOY: No objection.

18 MR. CALEB: No objection.

19 THE COURT: Thank you.

20 Instruction number 11 is the credibility of witnesses
21 instruction. The evidence in this case before you has
22 consisted in part of the testimony of the witnesses.

23 Any objection from the government?

24 MS. CHOY: No, Your Honor.

25 THE COURT: Any objection from the defendant?

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1 MR. CALEB: No objection.

2 THE COURT: Instruction number 12 will be, you have
3 heard evidence that several witnesses -- and this was page 19,
4 Mr. Caleb.

5 MR. CALEB: Thank you.

6 THE COURT: Any objection from the government?

7 MS. CHOY: No, Your Honor.

8 THE COURT: Any objection from the defendant?

9 MR. CALEB: So just -- no objection, but I feel like
10 this one could be edited as well to, you have heard evidence
11 that several witnesses have been previously convicted, instead
12 of once. There were several witnesses that were -- well, at
13 least one witness that was convicted multiple times of criminal
14 conduct. So I would --

15 THE COURT: Just say were previously convicted?

16 MR. CALEB: Yes. So my change would read, you have
17 heard evidence that several witnesses were previously convicted
18 of criminal conduct.

19 THE COURT: Ms. Choy?

20 MS. CHOY: Previously is fine, Your Honor. I think I
21 like the wording of "a crime" better.

22 MR. CALEB: Well, just the tense. It says "a crime,"
23 and that's not really accurate. It's -- at least Mr. Rahim was
24 convicted of two other crimes. So maybe you could say
25 convicted of crimes.

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1 THE COURT: Why don't we simply -- could we say one
2 or more crimes?

3 MR. CALEB: That's fine.

4 MS. CHOY: Yes, Your Honor.

5 THE COURT: Okay. So it will read, you have heard
6 evidence that several witnesses were previously convicted of
7 one or more crimes.

8 What will be instruction number 13 will be, you have
9 heard testimony from witnesses that have pled guilty to a crime
10 which arose out of the same events. That was page 20.

11 Any objection from the government?

12 MS. CHOY: No, Your Honor.

13 THE COURT: From the defendant?

14 MR. CALEB: No objection. Just it should be edited
15 to change from guilty to a crime, to guilty to crimes. So I
16 can't remember which witness it was, but there was one witness
17 that pled guilty to conspiracy and bribery, I want to say.

18 THE COURT: Did any of the co-defendants plead guilty
19 to multiple counts?

20 MS. CHOY: Mr. Rahim did.

21 THE COURT: Mr. Rahim did? So do you want to just
22 have it be consistent with the previous instruction and say,
23 have pled guilty to one or more crimes which arose out of the
24 same events?

25 MR. CALEB: That's fine.

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1 THE COURT: Okay. What will be instruction number 14
2 will be, the government has presented testimony from one or
3 more witnesses who have entered into a plea agreement.

4 Any objection from the government?

5 MS. CHOY: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. CALEB: No.

8 THE COURT: Instruction number 15 would be, the
9 government has presented exhibits in the form of charts and
10 summaries. Any objection from the government?

11 MS. CHOY: No, Your Honor.

12 THE COURT: From the defendant?

13 MR. CALEB: No.

14 THE COURT: Instruction number 16 will be the
15 demonstrative aids.

16 Any objection from the government?

17 MS. CHOY: No, Your Honor.

18 THE COURT: From the defendant?

19 MR. CALEB: No.

20 THE COURT: The next instruction, I had a question.
21 And this is the question about -- it's the prior inconsistent
22 statements question, when a witness is questioned about an
23 earlier statement he or she may have made, or earlier testimony
24 he or she may have given. Do we need this?

25 MS. CHOY: I don't think so, Your Honor.

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1 MR. CALEB: I didn't think so.

2 THE COURT: Okay. So we'll remove that one as well.

3 The next instruction is the co-conspirator. So that
4 will become -- the next instruction will become instruction
5 number 17, the co-conspirator statements.

6 Any objection from the government?

7 MS. CHOY: Not necessarily an objection, Your Honor,
8 but I question whether it's necessary, given the Court's
9 general credibility instruction. It seems to be cumulative of
10 those other instructions.

11 THE COURT: Well, I gave this cautionary instruction
12 on the first day of the trial. And so -- Mr. Caleb, do we need
13 it?

14 MR. CALEB: We didn't object.

15 THE COURT: Well, I think what Ms. Choy is suggesting
16 is that we remove it, because it already has -- we already have
17 a credibility of the witnesses instruction. Do we need -- do
18 we need the instruction?

19 MR. CALEB: It might be redundant.

20 THE COURT: Okay. So why don't we remove it. I'd
21 previously marked it as 17, but now I'll just remove it.

22 What will become 17 is, you may consider evidence and
23 consciousness of guilt a specific statement.

24 This is a revised instruction from what the
25 government had previously offered. I made one other change to

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1 it. You will see we used course of conduct for actions, and I
2 added in the last sentence the term, course of conduct --
3 explanation statement of course of conduct. And so this --
4 this instruction, I presume, Ms. Choy, goes to the issue of the
5 gun sales, for example. And so I think you're entitled to it.
6 You know, I'll hear any objections that there may be. And I
7 just wanted -- I thought that the instruction as it was
8 proffered didn't really fit the facts of this particular case.
9 And so I tried to revise it to have it fit the facts of the
10 case.

11 MS. CHOY: This instruction is fine by the
12 government, Your Honor.

13 THE COURT: Mr. Caleb?

14 MR. CALEB: We'll defer.

15 THE COURT: All right. I'm going to give it as
16 instruction number 17.

17 Instruction number 18 is the testimony of law
18 enforcement officers. That was previously page 27, Mr. Caleb.

19 Any objection from the government?

20 MS. CHOY: No, Your Honor.

21 THE COURT: Any objection from the defendant?

22 MR. CALEB: No objection.

23 THE COURT: Instruction number 19 is the undercover
24 agents instruction.

25 Any objection from the government?

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1 MS. CHOY: No, Your Honor.

2 THE COURT: From the defendant?

3 MR. CALEB: No, Your Honor.

4 THE COURT: Instruction number 20 will be tape
5 recordings. The government has offered evidence in the form of
6 tape recordings.

7 Any objection from the government?

8 MS. CHOY: No, Your Honor.

9 THE COURT: From the defendant?

10 MR. CALEB: No, Your Honor.

11 THE COURT: And I take it what is going to be going
12 back to the jury does not have the subtitles; is that correct?

13 MS. CHOY: That's correct, Your Honor.

14 THE COURT: Okay. Instruction number 21 is that the
15 transcripts were displayed for the limited purposes of aiding
16 you in following the conversation.

17 Do we really need that? Because, one, those
18 transcripts aren't going back; and two, we told them
19 throughout, you know, these transcripts are really just aiding
20 you here, you're to be guided by what you hear on the audio or
21 see on the video.

22 Do we need it?

23 MS. CHOY: I think it would be appropriate to
24 reiterate that to the jury so that we can be sure that they
25 understand.

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1 THE COURT: We're going to get a question: Can we
2 have the transcripts?

3 MR. CALEB: So I agree with the caveat that I think
4 we can strike the last paragraph. Since they're not going to
5 have it, they're not going to -- that's going to be irrelevant.

6 MS. CHOY: I do plan to show some of the transcripts
7 in my closing. And so I would request that Your Honor give the
8 whole instruction.

9 THE COURT: I'll probably give the whole thing since
10 they're probably going to see it.

11 MR. CALEB: I just didn't hear that.

12 THE COURT: She -- the government is going to play
13 some of the transcripts that's going to have the -- or play
14 some of the audio and video that's going to have the
15 transcripts.

16 MR. CALEB: Okay. I didn't know that.

17 THE COURT: Yeah. So I'll give it as instruction 21.

18 Instruction 22 will be the intent of a person who
19 possesses any -- the intent of a person or the knowledge of a
20 person who possesses any particular time -- that will be
21 instruction number 22.

22 Any objection?

23 MS. CHOY: No, Your Honor.

24 THE COURT: Any objection from the defendant?

25 MR. CALEB: None.

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1 THE COURT: Instruction number 23 is to sustain its
2 burden -- and this was previously 32, Mr. Caleb.

3 Any objection from the government?

4 MS. CHOY: No, Your Honor.

5 THE COURT: From the defendant?

6 MR. CALEB: No, Your Honor.

7 THE COURT: Instruction number 24 will be the
8 lawyers' objections are not -- and this was previously page 13.
9 I moved it. It's hard to find the right place for that.

10 Any objection from the government?

11 MS. CHOY: No, Your Honor.

12 THE COURT: From the defendant?

13 MR. CALEB: No.

14 THE COURT: Instruction number 25 will be, there is
15 nothing different in the way that a jury should consider the
16 evidence in a trial.

17 Any objection from the government?

18 MS. CHOY: No, Your Honor.

19 THE COURT: From the defendant?

20 MR. CALEB: No, Your Honor.

21 THE COURT: And instruction number 26 is, your
22 verdict must be unanimous.

23 Okay. So those are all our preliminary instructions.
24 So I did not change the order of the next -- all the
25 substantive instructions at all. I thought they were kind of

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1 put in order already.

2 Okay. Instruction number 27 will be the superseding
3 indictment charges that the offenses were committed on or
4 about.

5 Any objection from the government?

6 MS. CHOY: No, Your Honor.

7 THE COURT: From the defendant?

8 MR. CALEB: No, Your Honor.

9 THE COURT: 28 is a separate crime was charged on
10 each count.

11 Any objection from the government?

12 MS. CHOY: No, Your Honor.

13 THE COURT: From the defendant?

14 MR. CALEB: No.

15 THE COURT: 29 is the defendant, Scott Howard
16 Jenkins, is charged with crimes which I will instruct you
17 shortly.

18 Any objection from the government?

19 MS. CHOY: No, Your Honor.

20 THE COURT: From the defendant?

21 MR. CALEB: No.

22 THE COURT: Instruction 30 is Count One, charges
23 beginning no later than on or around April 2019; it's the
24 conspiracy description.

25 Any objection from the government?

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1 MS. CHOY: No, Your Honor.

2 THE COURT: From the defendant?

3 MR. CALEB: No.

4 THE COURT: Instruction 31, sustain its burden of
5 proof on the crime of conspiracy to commit bribery.

6 Any objection from the government?

7 MS. CHOY: No, Your Honor.

8 THE COURT: From the defendant?

9 MR. CALEB: No, Your Honor.

10 THE COURT: 32, first element of the crime of
11 conspiracy is the existence of a conspiracy.

12 Any objection from the government?

13 MS. CHOY: No, Your Honor.

14 THE COURT: From the defendant?

15 MR. CALEB: No objection.

16 THE COURT: 33 is the second and third elements of
17 the crime of conspiracy are the defendant knew the purpose of
18 the conspiracy.

19 Any objection from the government?

20 MS. CHOY: No, Your Honor.

21 THE COURT: From the defendant?

22 MR. CALEB: No objection.

23 THE COURT: 33 -- I think that's right. I keep
24 losing my place.

25 MR. CALEB: Is that 34?

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1 THE COURT: 34, excuse me. 34, the fourth element of
2 the crime of conspiracy is that at some time during the
3 existence of the life of the conspiracy, blah blah blah.

4 Any objection from the government?

5 MS. CHOY: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. CALEB: No objection.

8 THE COURT: 35 is crimes the defendant allegedly
9 commit bribery concerning programs -- this is the object of
10 conspiracy charge.

11 Any objection from the government?

12 MS. CHOY: No, Your Honor.

13 THE COURT: From the defendant?

14 MR. CALEB: No objection.

15 THE COURT: 36 is Count Two.

16 Any objection from the government?

17 MS. CHOY: No, Your Honor.

18 THE COURT: From the defendant?

19 MR. CALEB: No objection.

20 THE COURT: 37 is Counts Three through Five, charge
21 the defendant committed honest services wire fraud through
22 bribery.

23 Any objection from the government?

24 MS. CHOY: No, Your Honor.

25 THE COURT: From the defendant?

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1 MR. CALEB: No objection.

2 THE COURT: 38 sets out the description of the
3 particular wire charges in Three through Five.

4 Any objection from the government?

5 MS. CHOY: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. CALEB: No, Your Honor.

8 THE COURT: 39 is the use of mail in each
9 transmission by wire communication and interstate commerce --
10 should be 39.

11 Any objection from the government?

12 MS. CHOY: No, Your Honor.

13 THE COURT: From the defendant?

14 MR. CALEB: No.

15 THE COURT: 40 is the first element of both honest
16 services mail fraud charged in Count Two and honest services
17 wire fraud in Three through Five.

18 Any objection from the government?

19 MS. CHOY: No, Your Honor.

20 THE COURT: From the defendant?

21 MR. CALEB: No objection.

22 THE COURT: 41 is -- I know that the government wants
23 to talk about that.

24 Ms. Choy?

25 MS. CHOY: Thank you, Your Honor. So the

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1 government's request would be that the second sentence of this
2 instruction be revised to say when a public official devises or
3 participates in a bribery scheme, that official defrauds the
4 public of its right to the official's honest, faithful, and
5 disinterested services. And that, Your Honor, is just the
6 straightforward law of honest services fraud. And I appreciate
7 Your Honor's concern that you raised yesterday about whether
8 that may be a factual determination. Respectfully, I think
9 that's a matter of law that is reflected in the honest services
10 fraud case law, that that's sort of the part of the theory of
11 honest services fraud, that when a public official who owes a
12 fiduciary duty to the public to render honest services secretly
13 takes bribes, that is a form of fraud, because the public is
14 cheated out of its right to honest services.

15 And so we think the jury needs to understand that,
16 because this is not a sort of straightforward, intuitive
17 concept, and they might be confused about why we're talking
18 about fraud when this is a bribery case. And so the function
19 of the instruction is to explain to the jury this theory which
20 is reflected in the doctrine that a fiduciary who secretly
21 furthers their own interests using their official position
22 thereby commits a form of fraud.

23 And the instruction that we had proposed previously
24 that was given in the *McCabe* case that was recently affirmed by
25 the Fourth Circuit, it has the same concept in it. And that's

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1 an instruction that's given as a matter of course in honest
2 services fraud cases. And what we've passed up to Your Honor
3 -- and we've also provided copies to the defense -- are an
4 example that was recently prosecuted by our section in Puerto
5 Rico from *United States v. Charbonier*. It's number 20-246 in
6 the District of Puerto Rico. And the same instruction that was
7 given in the *McCabe* case was given in that case.

8 And then the second document that we passed up are
9 the pattern instructions from the Eleventh Circuit, which also
10 had a similar instruction that when a public official takes a
11 bribe, he or she thereby defrauds the public.

12 So these are instructions that reflect the case law
13 and that explain to the jury the somewhat obscure point of law,
14 which is that taking a bribe as a fiduciary is a form of fraud.
15 So we just request that the instruction be edited to reflect
16 that for the jury.

17 THE COURT: Mr. Caleb?

18 MR. CALEB: Yes. Just as an initial matter, can I
19 have the exact language?

20 THE COURT: So I think what Ms. Choy is suggesting is
21 that the first sentence would remain as is. The second
22 sentence would read, when a public official devises or
23 participates in a bribery scheme, that official defrauds the
24 public's right -- I'm sorry --

25 MS. CHOY: Defrauds the public of its right.

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1 THE COURT: Defrauds the public of its right to the
2 official's honest, faithful, and disinterested service.

3 MR. CALEB: And that's it?

4 THE COURT: Yes.

5 MR. CALEB: We defer in that case, Your Honor.

6 THE COURT: Okay. I'll accept the government's
7 changes, and that will be instruction number 41 as amended.

8 Instruction number 42 defines bribery.

9 Any objection from the government?

10 MS. CHOY: No, Your Honor.

11 THE COURT: From the defendant?

12 MR. CALEB: No objection.

13 THE COURT: Any objection -- 43 is bribery involves
14 the exchange of a thing of value for an official action by a
15 public official. The official act -- and it goes on.

16 Any objection from the government?

17 MS. CHOY: No, Your Honor.

18 THE COURT: From the defendant?

19 MR. CALEB: No objection.

20 THE COURT: Instruction 44 is, because people rarely
21 act for a singular purpose.

22 Any objection from the government?

23 MS. CHOY: No, Your Honor.

24 THE COURT: From the defendant?

25 MR. CALEB: No objection.

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1 THE COURT: 45 is the government need not prove that
2 a thing of value caused a public official to change his
3 position.

4 Any objection from the government?

5 MS. CHOY: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. CALEB: No objection.

8 THE COURT: 46 is the second element of honest
9 services fraud charged in Count Two, and goes on and talks
10 about that.

11 Any objection from the government?

12 MS. CHOY: No, Your Honor.

13 THE COURT: From the defendant?

14 MR. CALEB: No objection.

15 THE COURT: 47 is the third element of honest
16 services mail and wire fraud.

17 Any objection from the government?

18 MS. CHOY: No, Your Honor.

19 THE COURT: From the defendant?

20 MR. CALEB: No objection.

21 THE COURT: 48 is the fourth element of honest
22 services mail fraud.

23 Any objection from the government?

24 MS. CHOY: No, Your Honor.

25 THE COURT: From the defendant?

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1 MR. CALEB: No objection.

2 THE COURT: 49 is the fourth element of honest
3 services wire fraud.

4 Any objection from the government?

5 MS. CHOY: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. CALEB: No objection.

8 THE COURT: 50 is Count Six through Twelve, and it
9 defines each of those particular actions. It's the three-page
10 instruction.

11 Any objection from the government?

12 MS. CHOY: No, Your Honor.

13 THE COURT: From the defendant?

14 MR. CALEB: No objection.

15 THE COURT: 51 is to prove the crime of bribery
16 concerning programs receiving federal funds.

17 Any objection from the government?

18 MS. CHOY: No, Your Honor.

19 THE COURT: From the defendant?

20 MR. CALEB: No objection.

21 THE COURT: 52 defines agent.

22 Any objection from the government?

23 MS. CHOY: No, Your Honor.

24 THE COURT: From the defendant?

25 MR. CALEB: No objection.

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1 THE COURT: 53 is a phrase, business or transaction
2 or series of transactions refers to the business of the covered
3 entity here in the Culpeper County sheriff's office.

4 Any objection from the government?

5 MS. CHOY: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. CALEB: No objection.

8 THE COURT: All right. 54, the government must prove
9 the value of the business, transaction, or series of
10 transactions was \$5,000 or more.

11 Any objection from the government?

12 MS. CHOY: No, Your Honor.

13 THE COURT: From the defendant?

14 MR. CALEB: No objection.

15 THE COURT: 55 is the government does not have to
16 prove that federal funds were involved in the bribery
17 transaction.

18 Any objection from the government?

19 MS. CHOY: No, Your Honor.

20 THE COURT: From the defendant?

21 MR. CALEB: No objection.

22 THE COURT: 56 is *quid pro quo* instruction.

23 Any objection from the government?

24 MS. CHOY: No, Your Honor.

25 THE COURT: From the defendant?

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1 MR. CALEB: No objection.

2 THE COURT: 57 is the last instruction, and that is,
3 to influence means that a payment was made before the official
4 action.

5 Any objection from the government?

6 MS. CHOY: No, Your Honor.

7 THE COURT: From the defendant?

8 MR. CALEB: No objection.

9 THE COURT: All right. And I received the verdict
10 form with the joint edits on it. That looks fine to me. We'll
11 finalize that. What I do is -- there's one last instruction
12 behind there that I pull out, and I read that to the jury after
13 you all have closed and right before they go back.

14 It tells them, elect a foreman, conduct your
15 deliberations in a business-like fashion. Send questions out
16 to us in written form, all that kind of basic stuff. And then
17 I will read the verdict form to them and try to demonstrate
18 that to them as best as possible.

19 So we'll finalize those. We'll give you all -- we'll
20 give you copies of them. You'll have one last time -- I'll
21 take a little bit of a break. You'll have one last time to go
22 through them, and I'll ask if there are any objections to the
23 instructions 1 through 57. I don't intend to go through them
24 individually again, but -- just to make sure if anything has
25 changed. Do you all want to see -- I don't know if

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1 Ms. Curry-Ledbetter has done these final changes in red line or
2 not -- do you all want to see the instructions with red line to
3 make sure we did it correctly, or do you trust us to edit
4 correctly?

5 MS. CHOY: We trust the Court, Your Honor.

6 THE COURT: Since I'm not doing it, it's probably a
7 good idea.

8 All right. Does Howard know which juror?

9 Do we want to do this in a closed courtroom, the
10 discussions with the juror?

11 MS. CHOY: No, Your Honor. We think it should be
12 open court.

13 THE COURT: In open court? Okay.

14 (Off-the-record discussion.)

15 THE COURT: Why don't we take a break. I want to
16 read the *Smith* case first as well. So why don't we stand in
17 recess for ten minutes.

18 (Recess.)

19 THE COURT: All right. So I am going to bring in --
20 I do think that -- first of all, we're back on the record in
21 the *United States v. Jenkins*. The government is present by its
22 counsel. The defendant is present along with the benefit of
23 counsel as well.

24 I do think that we ought to bring the juror in, chat
25 with her. Howard is here. And what I'm told is that the note

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1 that was written was written in the hallway as the juror was
2 retiring for the evening, and the juror then gave it to him.
3 So it didn't filter out of the jury room, if you will.

4 And the question -- so reading *Smith* more
5 carefully -- and I appreciate the government providing that --
6 Judge Bredar -- a concern was raised by a juror, and Judge
7 Bredar questioned that juror more directly, because there were
8 some concerns that were raised by that juror regarding
9 particular issues that came out. And he addressed those more
10 specifically with her, you know, what prompted it, and then
11 whether that juror believed that those concerns were a
12 consequence of the jury service and so forth.

13 And then the more general questions that are talked
14 about in the case were then questions -- because there was some
15 discussion back in the jury room -- were questions that were
16 asked of the jurors that came out. It did prompt the release
17 of I think a total of three jurors, kept the one alternate,
18 denied a motion for a mistrial, and the case went on from
19 there.

20 So what I think I'm going to do is bring the juror
21 out. The script that I have is -- just so you all will know,
22 to tell her that we have her note, ask her what motivated her
23 to send the note, whether she believes whatever -- we'll listen
24 to her answer. If it's a consequence of -- realistic
25 consequence of her jury service, whether any of those concerns,

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1 if any, have been shared in the jury room, and then whether --
2 the key question then is whether she believes that she can be
3 fair and impartial.

4 Any other thoughts before we proceed, Ms. Choy?

5 MS. CHOY: No, Your Honor.

6 THE COURT: Mr. Andonian?

7 MR. ANDONIAN: No, Your Honor.

8 THE COURT: All right. Very well. And I don't know
9 who the juror is yet, but let's go ahead and bring her on out.

10 (Juror enters courtroom.)

11 THE COURT: Come on over here. The people that have
12 been sitting in the witness box all the time -- we'll let you
13 have a seat.

14 Good morning. How are you today?

15 FEMALE JUROR: Good morning. I'm good.

16 THE COURT: I know you all by face, but not by name.

17 Can you give us your name, please?

18 FEMALE JUROR: Lisa Choi.

19 THE COURT: Lisa Choi?

20 Ms. Choi, thank you very much for being here. We do
21 have your note, and I appreciate you sending that out, but I
22 wanted to follow back up just on a couple of things.

23 First of all, what motivated you to send the note?

24 FEMALE JUROR: I mean, nothing in particular about
25 this case. It was more just like just wondering about privacy

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1 and information, just wanting to know who has what information.

2 THE COURT: Who has what information?

3 FEMALE JUROR: Yeah.

4 THE COURT: All right. I get it.

5 FEMALE JUROR: I think also -- can I add something?

6 THE COURT: Yes, ma'am.

7 FEMALE JUROR: There were some other jurors that
8 expressed that they were -- I don't know what normal procedure
9 is, but they were surprised that our names were called out on
10 the first day. That didn't take me, you know, aback, but --
11 yeah, just curious.

12 THE COURT: It's not an anonymous jury.

13 FEMALE JUROR: No, that's fine. A lot of us are not
14 familiar with how things -- so it's just curiosity.

15 THE COURT: Is there -- and I guess really the
16 question -- you know, as I went through the entire voir dire
17 process on -- now I guess a week ago, the question I would
18 always come back to is: Can you be fair and impartial in
19 making a decision in this case based upon the law that I give
20 you when I instruct you all a little bit later in this case,
21 and the evidence that you've heard over the past several days.
22 And that's the question that I'll put to you now.

23 FEMALE JUROR: Oh, yes.

24 THE COURT: Okay. Do you have any concerns at all
25 about -- not about the evidence and so forth, but do you have

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1 any concerns that -- other than just wondering who has the
2 information from the questionnaires -- at all?

3 FEMALE JUROR: No, I really don't. It was just
4 wanting to know for my own personal knowledge, really. There's
5 no like fears or -- yeah, it was just wanting to understand.

6 THE COURT: All right.

7 FEMALE JUROR: How everything is working. I don't
8 know. Does that make sense?

9 THE COURT: No, that's perfectly fine. Great. Thank
10 you very much. So we're going to have you all back out here in
11 just a few minutes.

12 FEMALE JUROR: Okay. Thank you.

13 MS. PENG: Your Honor, if you could instruct the
14 juror not to discuss this conversation with the rest of the
15 jury.

16 THE COURT: Yeah, I think that's probably fair.

17 They're going to ask you what you were asked and just
18 simply say, just like you tell your folks in the evening, I
19 can't talk about it.

20 FEMALE JUROR: Okay. All right.

21 THE COURT: Thank you.

22 (Juror left the courtroom.)

23 THE COURT: Ms. Choy, anything we need to address?

24 MS. CHOY: I think that cleared up any potential
25 concern with that juror, Your Honor. I don't think any further

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1 action is necessary.

2 THE COURT: Mr. Andonian, Mr. Caleb?

3 MR. ANDONIAN: I think that took care of it.

4 THE COURT: Okay. I do think that -- only after this
5 case is over when we dismiss the jury, you all ponder whether
6 we say anything to the jury that -- you know, the information
7 that is gathered during the course of voir dire for purposes of
8 voir dire that you all gather through questionnaires is
9 confidential and is to be used only for -- solely for the
10 purposes of this case, whether we tell them that. But that
11 would be only after the case is over. And we don't need to
12 cross that bridge at this point in time.

13 All right. So what we'll do is we'll bring the jury
14 in. We'll finish the redirect -- or we'll have the redirect of
15 Mr. Jenkins.

16 Does the government anticipate any rebuttal?

17 MS. CHOY: We're going to wait and see what happens
18 on redirect, Your Honor.

19 THE COURT: And then we'll -- once all the evidence
20 is in, we'll take a break and collect our thoughts, make sure
21 our instructions are where they want to be. We'll need to
22 print out the verdict form as well. And then we'll instruct
23 the jury and go from there.

24 Are we ready for the jury?

25 All right. Let's bring the jury in.

Jenkins - Redirect

1 (*Jury in, 10:42 a.m.*)

2 THE COURT: Ladies and gentlemen, please have a seat.
3 Good morning to you. And I apologize we're running a little
4 bit late this morning, but we have been working on other
5 matters that I believe are going to make our day more efficient
6 for us. So I appreciate your patience back in the back.

7 So where we were when we left off yesterday afternoon
8 is Mr. Jenkins -- Mr. Jenkins, I'll have you come on up -- was
9 still testifying, and we're here for his redirect.

10 Mr. Jenkins, since it's a new day, I'll go ahead and
11 get you re-sworn, if I could, please.

12 SCOTT H. JENKINS, CALLED BY THE DEFENSE, SWORN

13 THE COURT: Please have a seat. Slide on up and
14 you'll need to bring that microphone over to you and make sure
15 you speak up so that we can get your conversation.

16 Go ahead, Mr. Andonian.

17 MR. ANDONIAN: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. ANDONIAN:

20 Q Good morning, Mr. Jenkins.

21 A Good morning.

22 Q Mr. Jenkins, you were asked a lot of questions on
23 cross-examination yesterday, and I want to go over a handful of
24 things that you talked about. And I'm just going to start with
25 the general order regarding auxiliary deputies.

Jenkins - Redirect

1 Do you recall those questions?

2 A Yes, sir.

3 Q Did you delegate the power to create that general order to
4 anyone in your department?

5 A Yeah.

6 Q Who was that?

7 A The training accreditation officer, but we had multiples.
8 The most recent was Chad McKnight. But I believe that was
9 created prior to him by maybe Dennis Holmes.

10 Q And why did you delegate that power to create a document
11 that was purporting to govern the operation of your department?

12 A It's all directed to be able to have a general order
13 manual, meeting the standards for the accreditation process.

14 Q If that general order had come across your desk and you
15 read every word of it carefully, and you read what it did and
16 what it said, would you have approved it, given that it limited
17 your ability to appoint auxiliary deputies as you chose?

18 MS. PENG: Objection, leading.

19 THE COURT: Sustained.

20 BY MR. ANDONIAN:

21 Q What if anything would you have done if that general order
22 had come across your desk and you had read it carefully and
23 really fully digested it?

24 A Rejected it and had it redrafted.

25 Q You testified on cross-examination yesterday -- or I

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1 should say you were asked questions about the training of the
2 auxiliary deputies that Kevin Rychlik brought you. Do you
3 recall those questions?

4 A Yes.

5 Q Why is it that you didn't require any training of the
6 individuals Mr. Rychlik brought you?

7 A No different than dozens and dozens of other auxiliaries.
8 I was being the same.

9 Q Do auxiliary deputies need to be trained in order to be
10 appointed?

11 A No. No deputy does if the sheriff decides not to.
12 Everything is totally at his discretion. And I think that's
13 not known by most people, including the government.

14 Q You were shown a text message or a text thread between you
15 and Mr. Rahim yesterday on cross-examination in which you were
16 describing the farmhouse and the land that it sits on.

17 Do you remember that?

18 A Yes.

19 Q Can you just explain to us why it is that you were
20 explaining to Mr. Rahim the property and the land that he was
21 renting?

22 A I can only tell you what I said before, which is, if I
23 know that he's having to talk about it in detail, he probably
24 would want to know details that he may not know specifically.
25 I don't know if he knew the exact acreage of how big the

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1 property was. He originally was renting the house, and then
2 later, it changed to the whole property. He went up from \$500
3 to \$1,500 a month he agreed to have the property for his
4 sons and him to, you know, ride ATVs or do what they want. I
5 don't know how much more I can say. I can tell a lot more,
6 but, you know --

7 THE COURT: Mr. Jenkins, can you -- I'm going to get
8 you to slide up. I'm having a hard time hearing you.

9 THE WITNESS: I'm sorry, sir. I'll speak up.

10 THE COURT: That's great. Your voice carries away
11 from me. So thank you very much. I appreciate it.

12 Go ahead. I'm sorry to interrupt, Mr. Andonian.

13 BY MR. ANDONIAN:

14 Q There were questions on cross-examination yesterday about
15 how much cash Mr. Rahim ultimately gave you.

16 Do you recall those questions?

17 A Yes.

18 Q How much cash did Mr. Rahim ultimately give you, as best
19 as you can recall?

20 A As best as I can recall, there was the initial, as he had
21 told, 25 -- I'm sorry, total -- and then at a later point --
22 again, I don't know the date exactly, there was 20 later,
23 totaling the 45. Then as you saw the documents showed there
24 was a loan that was two separate checks, but it was from him to
25 me for the 35.

Jenkins - Redirect

1 Q Why did you not report any of the cash you got from
2 Mr. Rahim on your campaign finance disclosure forms?

3 A Because it didn't apply.

4 Q Why didn't it apply?

5 A We spent thousands -- tens of thousands of dollars on the
6 things I tried to describe yesterday. I can elaborate as much
7 as anyone would like. I mentioned yesterday the biggest
8 example is clear, and there's plenty of proof online or in
9 person -- I mean, we have hundreds upon hundreds of those
10 shirts and hats left still unsold of the Make Virginia Great
11 Again logo. And I think I also tried to mention -- I tried to
12 mention about the firing range. I taught concealed carry
13 classes for years, and had other instructors come and teach
14 many classes on my property and my ranges. And that was a goal
15 to have as a business venture. I understand COVID hit and
16 things changed, and there was -- you know, but anyway -- and I
17 mentioned the other business he was trying with Dave Kidwell
18 and so forth. They were starting the game of chance or
19 whatever you call those machines. That was a huge blunder for
20 them, but I actually didn't spend money on that. That was --
21 he was -- well, it doesn't matter if it wasn't spent on that.
22 But there was -- all of that money did not apply -- any of that
23 money did not apply for campaign donations. It wasn't reported
24 because it wasn't supposed to be. It wasn't a donation.

25 Q Now, you mentioned the loan that you had between you and

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1 Mr. Rahim for the \$35,000. And you were shown yesterday on
2 cross-examination the loan document. Why is it that you had a
3 loan agreement with Mr. Rahim for the \$35,000, but no written
4 agreement for the cash that he gave you?

5 A I can't speak for, you know, anyone with his finances, but
6 basically I guess at the moment, you know, he would explain --
7 he was really wealthy, or at least he appeared to be from what
8 I saw. But basically, it's cash flow, I guess, how much he has
9 in I guess liquid or in whatever accounts that he's going to
10 get money from instead of cash at any given moment. And then
11 also he said he has this business -- whatever the name of it
12 is -- B or something investments. But anyway, that's a
13 business where they loan money all the time, interest and so
14 forth. And that's how it was initiated, the first
15 conversation. That's what I was asking him for. But obviously
16 when we continued on with our business ventures -- and I don't
17 have a date -- but anyway, we did that. Very quickly it was,
18 well, we're going to do this now, and okay, just take that
19 cash, let's -- you know, he didn't need to go to the bank or
20 get more money. It was like, okay, take that, we're going to
21 use that. With your other money, we're going to do this, and
22 so forth, if that makes sense.

23 Q Did Mr. Rahim ever tell you that any of the cash came from
24 an individual named Fred Gumbinner?

25 A I don't want to say what's not true. I've heard the

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1 testimony. I've seen --

2 Q Well, I'm just asking from your recollection based on what
3 you know, did Mr. Rahim tell you --

4 A He was giving me his money. Now, I understand Fred says
5 he gave him -- but the 20 that I got later from him was him
6 giving me money to put into our ventures.

7 Q Is Mr. Rahim garnishing your wages as you sit here today?

8 A I know you had the paperwork a couple -- I don't know, a
9 few months ago, whenever it was this year. He did file that
10 paperwork, a judgment, and then a garnishment. And it was in
11 effect until just before this trial started. Miraculously, I
12 get a notice from the Fairfax court that he's withdrawing. And
13 I hadn't paid him anything. He did have it served at my banks
14 to draw funds. But the money he was claiming -- again, I don't
15 understand a lot of the things that he -- I know we fell out.
16 We were close at one point. He's a good family man. I
17 respected that, and thought a lot of him.

18 Q I want to turn your attention to some questions -- or a
19 question at least that you got about your statement to the FBI
20 agent back in January of '23. Do you remember those questions?

21 A I mean, I remember sitting there a long time, yes.

22 Q Well, let me ask you about that. Do you remember speaking
23 with the FBI agents back at the end of January 2023?

24 A Oh, yes.

25 Q Was that a conversation you were expecting to have, or was

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1 that something that just happened one day?

2 A No. They just called me up that morning and I drove down
3 and met them.

4 Q Can you describe how you were feeling during that
5 interview?

6 A Well, initially it was pitched as it was about Rick or
7 something else. That's how you do those things, I guess. And
8 then it turned quickly against me. And I guess the easiest way
9 in words -- say shocked, scared, all of the above.

10 Q As you were talking to the FBI agents at that time, did
11 you remember every detail of everything that had happened over
12 the past year or so?

13 A No. I mean, if you're me, I mean, that's kind of the
14 worst day of your life when that's happening. It was
15 definitely -- I mean, if you listen to the tape, you can hear I
16 just -- it was -- no, I mean, I'm sure my mind wasn't
17 completely clear and able to recall everything, but I did my
18 best. I told them what I knew. I didn't ask for a lawyer. I
19 didn't stop the interview. I didn't stop them if they wanted
20 to go to my house and look for the cash. It was there. They
21 had a warrant, too. And I gave permission. And that would
22 have shown that I hadn't done something with it. But I can't
23 change that now.

24 Q I want to talk to you about some of the questions you got
25 about the individual named Mike, who you swore in as an

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1 auxiliary deputy.

2 Did you know that Mike had a felony conviction on his
3 record?

4 A I'm swearing to tell the whole truth, and I can't sit here
5 today from recall and remember that conversation. And yes, I
6 knew that when I went in the room, but I'm going by what I've
7 heard on the stand, and what I best can recall from what I've
8 seen this week. And I'm saying that it does not conflict with
9 what I would think was happening, because I wouldn't have -- I
10 didn't run the information myself. I just entrusted -- just
11 like with Rick and other -- the information is handled, they're
12 okay as far as the process. You know, that's what caused the
13 whole problem, me rushing and doing the things like that
14 jumbled together at one time, and me assuming, because I trust
15 my staff, just like I trusted Kevin too, but I trust my staff
16 to do the things they're supposed to do. So to my knowledge
17 going into that, knowing he was a felon was not an issue. Like
18 I mentioned, you know, whether it's Rick, who was a felon, had
19 his rights restored -- this guy was no different than him or --
20 I mean, I can name 100 others auxiliaries for me -- or other
21 places, like I mentioned, Jelly Roll.

22 MS. PENG: Your Honor, objection at this point.

23 THE COURT: Sustained.

24 MR. ANDONIAN: Let me just ask a follow-up question.

25 THE COURT: Focus on the people involved in this

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1 case.

2 THE WITNESS: Yes, sir.

3 BY MR. ANDONIAN:

4 Q Was it an issue to you that Mike had a nonviolent felony
5 on his record and that you were swearing him in?

6 A No. I supported -- I've never objected to a Culpeper
7 citizen getting their gun rights back from a nonviolent felony
8 in the past years prior.

9 Q I want to go back now to some of the questions you got
10 about the gun sale transaction that you and Mr. Rychlik
11 discussed in the Target parking lot.

12 Do you remember those questions?

13 A Yes.

14 Q Why is it that you just didn't amend the report that you
15 believed to have been filed without the cash being on it,
16 instead of creating this gun sale agreement?

17 A I tried to explain yesterday -- and I won't bore you --
18 but in short, it's politics, and the appearance, perception,
19 and the attack that you get when any kind of mistake is made.
20 And you know, we're always -- you're always in the light and
21 under attack. And I've had my share through the years, and
22 that was just -- you know, as I said, that was a decision of,
23 you know, one of several options to legally do what's right.
24 And that was the one that I chose.

25 Q You were asked questions yesterday on cross-examination

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1 about a prior court finding that you had been untruthful under
2 oath; do you recall that?

3 A I do.

4 Q Were you ever untruthful under oath in getting an innocent
5 person convicted, as the government suggested?

6 A Absolutely not. And it was proven.

7 MR. ANDONIAN: The Court's brief indulgence?

8 (Pause.)

9 MR. ANDONIAN: Your Honor, that's all that I have.

10 THE COURT: Very well. Thank you very much,
11 Mr. Jenkins. You may step down. Please do not discuss your
12 testimony at all while the matter is pending.

13 Mr. Andonian, Mr. Caleb, any other evidence?

14 MR. ANDONIAN: Not at this time for the defense, Your
15 Honor.

16 THE COURT: Defense rests?

17 MR. ANDONIAN: Yes, Your Honor.

18 THE COURT: Very well. Any redirect from -- any
19 rebuttal from the government?

20 MS. CHOY: No, Your Honor.

21 THE COURT: All right. Ladies and gentlemen, all of
22 our evidence is in. At this point in time, my job is to
23 finalize the jury instructions. That's what we've been working
24 on. And they're about 98 percent there. I just need to make
25 sure I put them in the right order for you all, make sure that

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I go over them with the lawyers. And so I'm going to take a break for -- let's hope it's no more than 15 minutes, come back, and our order of business will be I'll instruct you, and then depending on what time it is, we'll either go to lunch, come back, and have closings, and you all will begin to deliberate, or I'll instruct you, we'll have closings, and will begin to deliberate, and we'll get lunch brought in for you. So we'll see where the clock is at the right time.

So for now, it's not time to start talking to each other about the case. You have to wait until you get instructed and go through closings. So please do not have any discussions with each other. Please do not share any information with each other or begin to draw any conclusions at all one way or the other.

With that, we'll stand in recess for 15 minutes.

We'll excuse the jury for 15 minutes.

(Jury out, 11:01 a.m.)

THE COURT: You all please have a seat. Okay. So our instructions, we're getting those finalized. Ms. Curry-Ledbetter is putting the numbers back on them. We'll make copies of them. We're going to scan them in so Ms. Brown can show them from her computer onto their screens. I'll print the verdict form out. I'll give you a copy of that. I'll come back in ten minutes or so to make sure that -- if there is anything else we need to address with respect to instructions

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1 and so forth.

2 Otherwise, Ms. Choy, anything else we need to
3 address?

4 MS. CHOY: No, Your Honor.

5 THE COURT: Mr. Andonian?

6 MR. ANDONIAN: Your Honor, we would just renew our
7 motion for judgment of acquittal and submit it on the record.

8 THE COURT: So it is -- it's the defendant's burden
9 at this point to show where there is a lack of evidence. I
10 know you rely upon the record. That's the reason I asked if
11 there's anything else you wanted to go through, or anything
12 else you wanted to offer.

13 MR. ANDONIAN: No, Your Honor.

14 THE COURT: Nothing else?

15 Ms. Choy, anything you want to offer?

16 MS. CHOY: No, Your Honor.

17 THE COURT: Okay. So let me just address it. So I'm
18 going to -- as to Count One, the conspiracy count, there is
19 evidence of an agreement between Mr. Rychlik and Mr. Rahim and
20 Mr. Jenkins -- specifically between Mr. Rychlik and
21 Mr. Jenkins. And there is abundant evidence of bringing people
22 in to make contributions, to pay money, call them what you
23 like, and in return, the motivating factor of these folks who
24 were not otherwise involved with or related to the Culpeper
25 County sheriff's department, they expected to be deputized.

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1 And the list of those individuals is significant.

2 With respect to the mail -- and so -- and there are
3 acts taken along with way in furtherance of the conspiracy, and
4 we -- the videotapes and the audio was abundant of
5 Mr. Jenkins's knowing participation in that. So as to Count
6 One, there is enough evidence to go to the jury as to that.

7 As to Count Two, honest services mail fraud, this
8 relates specifically to Mr. Rahim's restoration of his gun
9 rights. Ms. Weakley testified that Mr. Rahim's firearm
10 restoration had to be mailed back, notwithstanding the fact
11 that they tried to pick it up. She said the statute says you
12 mail it, and so she mailed it, and so she did. And that's use
13 of the mail. And there's evidence of Mr. Jenkins's involvement
14 with Judge Durrer getting the hearing moved forward. There is
15 evidence regarding his agreement with Mr. Rahim to be able to
16 show that he was a Culpeper resident on a lease that the jury
17 could conclude was not a real lease, and that the *quid pro quo*
18 for Mr. Rahim paying the monies early, because there was part
19 of the testimony was -- or part of the audio was that from the
20 jump, I think was the term used in the audio, if I remember
21 correctly, Mr. Rahim knew what he wanted and Mr. Jenkins knew
22 what he wanted. So as to Count Two, mail fraud, the motion is
23 overruled.

24 As to Counts Three, Four, and Five, which is the wire
25 fraud, the text messages, Three relates to -- there is evidence

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1 that Mr. Rychlik and Mr. Rahim testified of the existence of
2 the scheme to accept bribes. Mr. Rahim sent a text message on
3 June the 7th about getting his firearm rights restored, and
4 from Dawn Meisle at Apple about the interstate commerce, that
5 part. And there's a stipulation that -- of course, that was --
6 interstate commerce as it relates to the campaign finance.
7 That was the banking -- the servers -- there are no servers in
8 Virginia.

9 As it relates to the wire fraud on Count Three as
10 well, the interaction with Mr. Jenkins and Judge Durrer and the
11 Commonwealth's Attorney about getting the restoration of the
12 firearms rights restored, there is sufficient there.

13 As to the honest services fraud in Count Four, that
14 relates to the text messages sent on January 3rd. And that is
15 to get Mr. Cooper sworn in as an auxiliary deputy as well. And
16 there is sufficient evidence that Mr. Cooper -- January 3rd of
17 2023, Mr. Cooper was sworn in as a deputy -- sworn in as a
18 deputy on the same day that he came down and gave a check for
19 \$5,000 as well. So I overrule it as to Count Four.

20 As to Count Five relates to the wire communication,
21 and that is a representative of the Blue Ridge Bank account and
22 the deposit of the Metcalf check. Again, I'll overrule that.

23 Six through Twelve all relate to the individuals
24 we've heard from. And there's abundant evidence that there is
25 a scheme that Mr. Rychlik -- the jury could conclude that he's

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1 an agent of the government -- of Mr. Jenkins to bring people
2 in. And then Mr. Rahim was acting in that way as well, the
3 jury could conclude that he's an agent as well. And as it
4 relates to each of the individuals in Six through Twelve, they
5 were sworn in either close in time or on the same day. And so
6 there is sufficient evidence for that to go forward.

7 So I'll overrule the motion in all regards.

8 All right. Otherwise, once we get those -- so we'll
9 just stand in recess until we get the jury instructions, and
10 we'll get them back to you all, and come back and instruct the
11 jury.

12 Stand in recess.

13 (Recess.)

14 THE COURT: We're back on the record in the matter of
15 *United States v. Jenkins*. The government is present by its
16 counsel. The defendant likewise is present along with the
17 benefit of counsel.

18 So I have given to you all instructions 1 through 57,
19 along with the verdict form, and I've put them in a three-ring
20 binder that will go back to the jury room in the hopes it will
21 be not a complete mess.

22 Ms. Choy, on behalf of the government, instructions 1
23 through 57, are there any -- first of all, any objections to
24 the Court instructing the jury as to numbers 1 through 57?

25 MS. CHOY: No, Your Honor.

Jenkins - Redirect

1 THE COURT: Any additional -- any additional
2 instructions to be given from the government's perspective?

3 MS. CHOY: No, Your Honor.

4 THE COURT: All right. Mr. Caleb, any objection to
5 instructions 1 through 37 -- 1 through 57, excuse me.

6 MR. CALEB: 1 through 57 -- no, Your Honor, assuming
7 they're the same as the ones we reviewed earlier.

8 THE COURT: They are.

9 MR. CALEB: And I believe that they are.

10 THE COURT: Yeah. Any additional instructions to be
11 offered on behalf of the defendant?

12 MR. CALEB: No, Your Honor.

13 THE COURT: All right. Are we ready for the jury?

14 Well, actually, before we do that, so it's 11:40.
15 How long do you anticipate being on your closing, Ms. Choy?

16 MS. CHOY: About an hour.

17 THE COURT: About an hour?

18 Okay. Mr. Andonian, Mr. Caleb, how long do you
19 anticipate?

20 MR. ANDONIAN: Maybe 40 minutes.

21 THE COURT: Okay. My thought had been to tell the
22 jury that we were going to kind of get through closings and we
23 would have pizza waiting for them, but that's an hour and 40
24 minutes. And if we instruct the jury until about 12:30, then
25 it's going to be 2:00. So I'll instruct the jury, and then

Jenkins - Redirect

1 we'll go to lunch, I think, and we'll come back and we'll do
2 closings, and then go from there.

3 Okay. Let's bring the jury in.

4 (*Jury in, 11:45 a.m.*)

5 THE COURT: Ladies and gentlemen, please have a seat.

6 All right. So let me tell you where we are and what
7 our proposed plan is. So ladies and gentlemen, all the
8 evidence is in. The time has come now for me to give you the
9 instructions that will guide your deliberations. I'm going to
10 read those to you now. For your ease, what we're going to do
11 is we're going to show them up on your screen. You're going to
12 have a copy of the instructions that are going to go back with
13 you. They're here in this notebook. You'll have them back
14 there. So what I want you to do is listen carefully. I'm
15 going to read the instructions to you.

16 Given what I anticipate will be probably longer
17 closing arguments than the opening statements were, we'll then
18 break for lunch. We'll come back. We'll have our closing
19 arguments at that point in time. And then we'll begin our
20 deliberations. And then the case will be yours and then you
21 all will be the captain of the ship, and will kind of guide how
22 we go from there.

23 All right. So ladies and gentlemen, if I could ask
24 you to -- you can put your pads down and pay attention to me
25 and to your screen. These are the final instructions of the

Charge to the Jury

1 Court.

2 CHARGE TO THE JURY

3 THE COURT: Members of the jury, the instructions
4 that I gave you at the beginning of the trial and during the
5 trial remain in effect. I now give you some additional
6 instructions. You must, of course, continue to follow the
7 instructions that I gave you earlier, as well as those that I
8 give you now. You must not single out some instructions and
9 ignore others, because all are important.

10 Instruction number 1: Members of the jury, now that
11 you have heard all the evidence in the case, it becomes my duty
12 to instruct you on the rules of law that you must follow and
13 apply in arriving at your decision. You will follow and apply
14 these rules of law after you have heard the final arguments of
15 the lawyers for the parties. It is your duty as jurors to
16 follow the law as instructed -- as stated in my instructions
17 and to apply the rules of law, so given, to the facts as you
18 find them from the evidence in the case, and solely the
19 evidence presented to you.

20 Counsel may quite properly refer to some of the
21 governing rules of law in their arguments. If, however, any
22 difference appears to you between the law as stated by me in
23 these instructions, you are governed by the instructions I am
24 about to give you. You must follow all of the rules as I
25 explain them to you. You may not follow some and ignore

Charge to the Jury

1 others.

2 You are not to single out one instruction alone as
3 stating the law, but must consider the instructions as a whole.

4 Neither are you to be concerned with the wisdom of
5 any rule of law stated by the Court. Regardless of any opinion
6 that you may have as to what the law ought to be, it would be a
7 violation of your sworn duty to base a verdict upon any other
8 view of the law than that given in the instructions, just as it
9 would be a violation of your sworn duty as judges of the facts
10 to base a verdict upon anything but the evidence in the case.
11 You must not base your verdict on prejudice, sympathy, guess
12 work or speculation, but on the evidence and on the rules of
13 law I have given to you.

14 Justice through the trial by jury must always depend
15 on the willingness of each individual juror to seek the truth
16 as to the facts from the same evidence presented to all the
17 jurors, and to arrive at a verdict by applying the same rules
18 of law as given in the instructions of the Court.

19 Instruction number 2: There are three important
20 rules that you must always keep in mind in a criminal case.
21 These are: One, a defendant is presumed innocent. The
22 government has the burden of proof to establish the defendant's
23 guilt, and the government has the burden to establish guilt
24 beyond a reasonable doubt. An indictment is merely the
25 burden to establish guilt beyond a reasonable -- an

Charge to the Jury

1 indictment -- excuse me -- is merely the formal way of accusing
2 a person of a crime to bring that person to trial. You must
3 not consider the superseding indictment as evidence of any
4 kind. You may not consider it as any evidence of the
5 defendant's guilt or draw any inference of guilt from it. The
6 defendant in this criminal case is presumed to be innocent.
7 The defendant begins the trial with a clean slate with no
8 evidence against him. The presumption of innocence remains
9 with the defendant throughout the trial unless and until he is
10 proven guilty beyond a reasonable doubt. The presumption of
11 innocence alone is sufficient to find the defendant not guilty
12 unless all of you are satisfied beyond a reasonable doubt of
13 the defendant's guilt from all the evidence admitted in the
14 case.

15 The presumption of innocence also means that the
16 defendant has no burden or obligation to present any evidence
17 at all or to prove that he is not guilty. As I have said many
18 times, the government has the burden of proving the defendant's
19 guilt beyond a reasonable doubt. Some of you may have served
20 as jurors in civil cases where you were told that it was only
21 necessary to prove that a fact is more likely true than not.
22 In criminal cases, the government's proof must be more powerful
23 than that; it must be beyond a reasonable doubt.

24 The burden is on the government -- instruction number
25 3: The burden is on the government to prove the defendant

Charge to the Jury

1 guilty beyond a reasonable doubt. This burden of proof
2 shifts -- never shifts throughout the trial. The law does not
3 require a defendant to prove his innocence, to call any
4 witnesses, or produce any evidence. While the government's
5 burden of proof is a strict and heavy burden, it is not
6 necessary that it be proved beyond all possible doubt, only a
7 reasonable doubt.

8 If you find that the government has proven beyond a
9 reasonable doubt every element of the offense or offenses for
10 which the defendant is charged, it is your duty to find him
11 guilty of that offense; however, if you find that the
12 government has failed to prove any single element of an offense
13 beyond a reasonable doubt, then you must find the defendant not
14 guilty of that offense.

15 So, if the jury, after careful and impartial
16 consideration of all the evidence in the case, if you have a
17 reasonable doubt that the defendant is guilty of a charge, you
18 must acquit on that charge.

19 Instruction number 4: The government is required to
20 prove a defendant guilty beyond a reasonable doubt, but it is
21 not required to present all possible evidence related to the
22 case or to produce all possible witnesses who might have some
23 knowledge of the facts of the case. In addition, as I have
24 explained, a defendant is not required to present any evidence
25 or produce any witnesses.

Charge to the Jury

1 Instruction number 5: You are to decide whether the
2 government has proved beyond a reasonable doubt that the
3 defendant is guilty of the crimes charged. The defendant is
4 not on trial for any act, conduct, or offense not alleged in
5 the superseding indictment; neither are you concerned with the
6 guilt of any other person or persons not on trial in this case.

7 Instruction number 6: If a defendant elects to take
8 the witness stand and testify in his own defense, as the
9 defendant has done in this case, then he becomes as any other
10 witness, and you must determine his credibility and give his
11 testimony such credence and belief as you think it deserves.
12 You should judge and determine the defendant's believability as
13 you would any other witness in this case.

14 Instruction number 7: I instruct you that if you
15 find the defendant guilty of the crimes charged, the sentence
16 to be imposed is my responsibility. You may not consider
17 punishment in any way in deciding whether the government has
18 proved its case beyond a reasonable doubt.

19 Instruction number 8: The evidence in this case
20 consists of, A, the sworn testimony of the witnesses; B, the
21 exhibits as I -- the exhibits I received into evidence; and C,
22 all facts to which the parties may have agreed or stipulated.

23 Stipulations are an agreement between the parties
24 that particular facts are true. There were two stipulations in
25 this case. Wherever the attorneys on both sides of the case

Charge to the Jury

1 have stipulated, or agreed, as to the existence of a fact, you
2 must accept the stipulation as evidence and regard the fact as
3 proved.

4 Certain things are not evidence. Anything you may
5 have heard about the case from outside the courtroom is not
6 evidence in this case. Do not let rumors, speculations -- do
7 not let rumors, suspicions, or anything else you may have seen
8 or heard outside the court influence your verdict.

9 Questions, statements, arguments of attorneys in this
10 case are not evidence unless they are made as an admission or
11 as a stipulation of fact.

12 You must not consider any matter that was rejected or
13 stricken by the Court. It is not evidence and should be
14 disregarded.

15 Instruction number 9: There are two types of
16 evidence that you may consider in properly finding the truth as
17 to the facts in this case. One is direct evidence, such as
18 testimony of an eyewitness. The other is indirect or
19 circumstantial evidence, the proof of a chain of circumstances
20 that indicates the existence or nonexistence of certain other
21 facts. Circumstantial evidence is evidence of facts and
22 circumstances from which one may infer connected facts which
23 reasonably follow in the common experience of mankind.

24 Circumstantial evidence is evidence which tends to prove a
25 disputed fact by proof of another fact or other facts which

Charge to the Jury

1 have a logical tendency to lead the mind to the conclusion that
2 the disputed fact has been established.

3 The law makes no distinction between direct and
4 circumstantial evidence, but simply requires that the
5 government present evidence -- either direct or
6 circumstantial -- that proves its case against a defendant
7 beyond a reasonable doubt. Therefore, circumstantial evidence
8 is to be treated no differently than direct evidence, and may
9 or may not be sufficient to support a verdict of guilty.

10 Instruction number 10: While you should consider
11 only the evidence in this case, you are permitted to draw such
12 reasonable inferences from the testimony and exhibits as you
13 feel are justified in light of common experience. You may make
14 deductions and reach conclusions that reason and common sense
15 lead you to draw from the facts that have been established by
16 the testimony and evidence in the case.

17 Instruction number 11: The evidence in this case
18 before you has consisted in part of testimony from witnesses.
19 You may believe all of what any witness said, or only part of
20 it, or none of it. You are the sole judges of the credibility
21 of the witnesses and the weight of the evidence.

22 You are not bound to decide any issue of fact in
23 accordance with the testimony of witnesses which does not
24 produce in your minds belief in the likelihood of truth.

25 The test is not which side brings the greater number

Charge to the Jury

1 of witnesses or presents the greater quantity of evidence; but
2 which witnesses, and which evidence, you believe are the most
3 accurate, and otherwise trustworthy. The testimony of a single
4 witness may be sufficient to prove any fact, even if a greater
5 number of witnesses may have testified to the contrary, if,
6 after considering all the other evidence, you believe that
7 single witness.

8 In considering the evidence, you are not limited to
9 the bold statements of the witnesses; in other words, you are
10 not limited solely to what you see and hear as the witnesses
11 testify. On the contrary, you are permitted to draw from the
12 facts which you find to have been proven such reasonable
13 inferences as may seem justified in light of your own
14 experience.

15 In determining the credibility of any given witness,
16 you should carefully scrutinize all the testimony given, the
17 circumstances under which each witness testified, and every
18 matter in evidence which tends to show either a witness is
19 worthy of belief. You may consider the intelligence, motive,
20 state of mind, demeanor, and manner while on the stand of each
21 witness. You may consider the witness's ability to observe the
22 matters as to which he or she has testified, and whether the
23 witness impresses you as having an accurate recollection of
24 these matters. You may also consider his or her interest in
25 the outcome of the case, and any bias or prejudice, and the

Charge to the Jury

1 extent to which, if any at all, each witness is either
2 supported or contradicted by other evidence in the case. In
3 evaluating credibility, you may call upon your own experience
4 and background in your everyday affairs in determining the
5 reliability or unreliability of statements made by others.

6 In considering the testimony of witnesses, you should
7 ask yourself whether there was evidence tending to prove that
8 the witness testified falsely concerning some important fact,
9 or whether there was evidence at all -- evidence that at some
10 other time the witness said or did something, or failed to say
11 or do something, which was different from the testimony the
12 witness gave during trial.

13 You should keep in mind, of course, that a simple
14 mistake by a witness does not necessarily mean that the witness
15 was not telling the truth as the witness remembers it, because
16 people naturally tend to forget some things or remember other
17 things inaccurately. So if a witness has made a misstatement,
18 you need to consider whether that misstatement was simply an
19 innocent lapse of memory or an intentional falsehood; and the
20 significance of that may depend upon whether it was -- whether
21 it has to do with an important factor or with only an
22 unimportant detail.

23 Instruction number 12: You have heard evidence that
24 several witnesses were previously convicted of one or more
25 crimes. You may use that evidence only to help you decide

Charge to the Jury

1 whether to believe the witnesses and how much weight to give
2 their testimony.

3 Instruction number 13: You have heard testimony from
4 witnesses who have pled guilty to one or more crimes which
5 arose out of the same events for which the defendant is on
6 trial today. You must not consider their guilty pleas as
7 evidence of the defendant's guilt. You may consider these
8 witnesses' guilty pleas only for the purpose of determining how
9 much, if at all, to rely upon these witnesses' testimony.

10 Instruction number 14: The government has presented
11 testimony from one or more witnesses who have entered into a
12 plea agreement with the government, received immunity, or
13 testified in the hopes of receiving leniency in their own
14 cases, or for some other benefit from the government. The
15 testimony of such witnesses -- or such a witness must be
16 considered by you and weighed with greater care and caution,
17 more so than the testimony of an ordinary witness.

18 You should not concern yourself with why the
19 government made such an agreement with the witness. Your
20 concern is whether the witness has given truthful testimony.

21 In evaluating the testimony of these witnesses, you
22 should consider whether, or the extent to which, their
23 testimony may have been influenced by the plea agreement,
24 immunity, desire for leniency, or other benefits received from
25 the government in connection with this case.

Charge to the Jury

Under the law, the government may request leniency in a case based on a criminal defendant's substantial assistance in the prosecution of another person. The ultimate sentence imposed, however, is up to the judge, and not to the government.

Instruction number 15: The government has presented exhibits in the form of charts and summaries. I decided to admit these charts and summaries in place of the underlying documents that they represent in order to save time and avoid unnecessary inconvenience. You should consider these charts and summaries as you would any other evidence.

Instruction number 16: The parties have presented exhibits in the form of demonstrative aids. These demonstrative aids are shown to you -- were shown to you in order to make the other evidence more meaningful and to aid you in considering the evidence. They are no better than the testimony or the documents upon which they are based, and are not themselves independent evidence. Therefore, you are not -- you are to give no greater consideration to these demonstrative aids than you would give to the evidence upon which they are based.

It is for you to decide whether the demonstrative aids correctly present the information contained in the testimony and in the exhibits on which they are based. You are entitled to consider the demonstrative aids if you find that

Charge to the Jury

1 they are of assistance to you in analyzing and understanding
2 the evidence.

3 Instruction number 17: You may consider as evidence
4 of consciousness of guilt a specific statement made by the
5 defendant denying guilt or involvement if you find that the
6 statement was not true. When a defendant voluntarily and
7 intentionally offers an explanation and makes some statement or
8 engages in a course of conduct tending to show he is guilty,
9 and the statement is later shown to be false or the course of
10 conduct fraudulent, the jury may consider whether this
11 circumstantial evidence points to a consciousness of guilt.
12 Whether or not evidence as to a defendant's voluntary
13 explanation or statement or course of conduct points to a
14 consciousness of guilt, and the significance to be attached to
15 any such evidence, are matters exclusively within the province
16 of the jury.

17 Instruction number 18: You have also heard the
18 testimony of law enforcement officers. The fact that a witness
19 is employed as a law enforcement officer does not mean that his
20 or her testimony necessarily deserves more or less
21 consideration or greater or lesser weight than that of any
22 other witness.

23 At the same time, it is quite legitimate for defense
24 counsel to try to attack the believability of a law enforcement
25 witness on the ground that his testimony may be colored by a

Charge to the Jury

1 personal or professional interest in the outcome of the case.

2 Just as with any witness, you must decide, after
3 reviewing all the evidence, whether you believe the testimony
4 of a law enforcement witness and how much weight, if any, it
5 deserves.

6 Instruction 19: You have heard testimony from
7 undercover agents and informants who were involved in the
8 government's investigation of the case. Law enforcement
9 officials may lawfully engage in stealth and deception, such as
10 the use of informants and undercover agents, to investigate
11 criminal activities. Undercover agents and informants may use
12 false names and appearances and assume the roles of members in
13 criminal organizations.

14 Whether or not you approve of the use of an
15 undercover agent or informant to detect unlawful activities is
16 not to enter into your deliberations in any way.

17 Instruction number 20: The government has offered
18 evidence in the form of tape recordings of conversations of the
19 defendant. These recordings were made without the knowledge of
20 the defendant, but with the consent and agreement of one of the
21 other parties in the conversations.

22 The use of this procedure to gather evidence is
23 perfectly lawful, and the government is entitled to use the
24 tape recordings in this case.

25 Instruction number 21: The transcripts of audio and

Charge to the Jury

1 video recordings were displayed for the limited purpose of
2 aiding you in following the content of the conversation as you
3 listened to the recording, and also to aid you in identifying
4 the speakers.

5 You are instructed that whether the transcripts
6 correctly or incorrectly reflected the content of the
7 conversation or the identity of the speakers is entirely for
8 you to determine.

9 Instruction number 22: The intent of a person or the
10 knowledge that a person possesses at any given time may not
11 ordinarily be proved directly because there is no way of
12 directly scrutinizing the workings of the human mind. In
13 determining the issue of what a person knew or what a person
14 intended at a particular time, you may consider any statement
15 made or acts done by that person and all other facts and
16 circumstances received in evidence which may aid in your
17 determination of that person's knowledge and intent.

18 You may infer, but are certainly not required to
19 infer, that a person intends the natural and probable
20 consequences of acts knowingly done or knowingly omitted. It
21 is entirely up to you, however, to decide what facts to find
22 from the evidence received during the trial.

23 Instruction number 23: To sustain its burden of
24 proof, it is not necessary for the government to prove that the
25 defendant personally did every act constituting the offense

Charge to the Jury

1 charged.

2 As a general rule, whatever any person is legally
3 capable of doing himself he can do through another acting as
4 his agent. So if you find that the facts or conduct of another
5 were deliberately ordered or directed by the defendant or
6 deliberately authorized or consented to by the defendant, then
7 the law holds that defendant responsible for such acts or
8 conduct just the same as if personally done by him.

9 Instruction number 24: At times during the trial,
10 the lawyers objected to questions or to answers by witnesses.
11 This simply means that the lawyers were requesting that I make
12 a decision on a particular rule of law. Do not draw any
13 conclusion from such objections, or from my rulings on the
14 objections. These are only related to the legal questions that
15 I had to determine, and should not influence your thinking.

16 When I sustained an objection to a question, the
17 witness was not allowed to answer it. Do not attempt to guess
18 what answer might have been given had I allowed the question to
19 be answered.

20 Similarly, when I told you not to consider a
21 particular statement, you were told to put that statement out
22 of your mind, and you may not refer to that statement in your
23 deliberations.

24 Instruction number 25: There is nothing different in
25 the way that a juror should consider the evidence in a trial

Charge to the Jury

1 from that in which any reasonable and careful person would deal
2 with any very important question that must be resolved by
3 examining facts, opinions, and evidence. You are expected to
4 use your good sense in considering and evaluating the evidence
5 in this case. Use the evidence only for those purposes for
6 which it has been received and give the evidence a reasonable
7 and fair construction in light of your common knowledge and the
8 natural tendencies and inclinations of human beings.

9 Instruction number 26: The decision that you reach
10 in the jury room, whether guilty or not guilty, must be
11 unanimous. You must all agree. Your deliberations will be
12 secret. You will never have to explain your verdict to anyone.

13 Instruction number 27 -- you all doing okay?

14 Instruction number 27: The superseding indictment
15 charges that the offenses were committed on or about certain
16 dates and in or about certain months. The government does not
17 have to prove that a crime was committed on an exact date, so
18 long as the government proves beyond a reasonable doubt that
19 the defendant committed the crimes on dates reasonably near the
20 dates stated in the superseding indictment.

21 Instruction number 28: A separate crime is charged
22 in each count of the superseding indictment. Each charge, and
23 the evidence pertaining to it, should be considered separately
24 by the jury. The fact that you may find the defendant guilty
25 or not guilty as to one of the counts should not control your

Charge to the Jury

1 verdict as to any other count.

2 Instruction number 29: The defendant, Scott Howard
3 Jenkins, is charged with crimes about which I will instruct you
4 shortly. Each charge is called a count. I will refer to each
5 count by the number assigned to it in the superseding
6 indictment.

7 You will not be furnished with the superseding
8 indictment itself, because an indictment is merely a statement
9 of charges and not, in and of itself, evidence.

10 The superseding indictment charges Scott Howard
11 Jenkins with 12 counts. Count One charges the defendant with
12 conspiracy in violation of 18 United States Code, Section 371.

13 Counts Two through Five charge the defendant with
14 honest services mail and wire fraud in violation of 18 United
15 States Code, Sections 1341, 1343, and 1346.

16 Counts Six through Twelve charge the defendant with
17 bribery concerning programs receiving federal funds in
18 violation of 18 United States Code, Section 666(a)(1)(B).

19 Defendant Scott Howard Jenkins has pled not guilty to
20 each of these charges, and therefore, denies that he is guilty
21 of the charges in the superseding indictment.

22 Instruction number 30: Count One charges that
23 beginning no later than in or around April 2019 and continuing
24 until in or around January 2023, in the Western District of
25 Virginia and elsewhere, the defendant, Scott Howard Jenkins,

Charge to the Jury

1 along with Rick Rahim, Fredric Gumbinner, James Metcalf, Kevin
2 Rychlik, Thomas Cooper, Philip Howell, and others known and
3 unknown, did knowingly and unlawfully combine and conspire,
4 confederate, and agree together and with each other, to commit
5 the following offenses against the United States. A: For
6 Jenkins, being an agent of the Culpeper County and the Culpeper
7 County sheriff's office, to corruptly solicit, demand, accept,
8 or agree to accept for his own benefit things of value from
9 Rick Rahim, Fredric Gumbinner, James Metcalf, Kevin Rychlik,
10 Thomas Cooper, and Philip Howell, intending to be influenced or
11 rewarded in connection with any business, transaction, or
12 series of transactions of Culpeper County or the Culpeper
13 County sheriff's office involving anything of value of \$5,000
14 or more; that is, as to Rick Rahim, Fredric Gumbinner, James
15 Metcalf, Kevin Rychlik, Thomas Cooper, and Philip Howell,
16 appointments as auxiliary deputy sheriffs, and additionally as
17 to Rick Rahim, a petition to restore Rick Rahim's firearms
18 rights in violation of 18 United States Code, Section
19 666(a)(1)(B).

20 B: For Scott Jenkins, Rick Rahim, Fredric Gumbinner,
21 James Metcalf, Kevin Rychlik, Thomas Cooper, and Philip Howell,
22 to devise and intend to devise a scheme or artifice to defraud
23 or deprive Culpeper County, the Culpeper County sheriff's
24 office, and the citizens of Culpeper County of their intangible
25 right to the honest services of Jenkins, through bribery, and

Charge to the Jury

1 for the purpose of executing such scheme, to knowingly use the
2 mail, or to cause wire communications to be transmitted in
3 interstate commerce in violation of 18 United States Code,
4 Section 1341, 1343, and 1346.

5 Instruction number 31: To sustain his burden of
6 proof for the crime of conspiracy to commit bribery concerning
7 programs receiving federal funds and honest services mail and
8 wire fraud as charged in Count One, the government must prove
9 the following four elements beyond a reasonable doubt.

10 First, that the conspiracy, agreement, and
11 understanding to commit bribery concerning programs receiving
12 federal funds or honest services mail or wire fraud as
13 described in the superseding indictment, was formed, reached,
14 or entered into by two or more persons.

15 Second, that at some time during the existence of
16 life of the conspiracy -- the existence or life of the
17 conspiracy, agreement, or understanding, the defendant knew the
18 purposes of the agreement.

19 Third, that the knowledge of the purposes of the
20 conspiracy, agreement, or understanding, the defendant
21 deliberately joined the conspiracy, agreement, or
22 understanding.

23 And fourth, that at some time during the existence or
24 life of the conspiracy, agreement, or understanding, one of its
25 alleged members knowingly performed an overt act and did so in

Charge to the Jury

1 order to further or advance the purposes of the conspiracy.

2 I will instruct you on the elements of bribery
3 concerning programs receiving federal funds and honest services
4 mail and wire fraud shortly. You should consider these
5 elements in determining whether the defendant knowingly and
6 intentionally conspired to participate in one or more of these
7 offenses. Participating in a conspiracy -- participating in a
8 conspiracy to commit a crime is a separate and distinct charge
9 from the underlying substantive offense. The crime of
10 conspiracy is the agreement to do something unlawful. It
11 doesn't matter whether the crime agreed upon was committed.

12 Instruction number 32: The first element of the
13 crime of conspiracy is the existence of a conspiracy, which is
14 an agreement between two or more persons to join together to
15 accomplish an unlawful purpose. It is a kind of partnership in
16 crime in which each member becomes the agent of every other
17 member.

18 The government must prove that the conspiracy came
19 into existence during or reasonably near the period of time
20 charged in the superseding indictment, and the defendant
21 knowingly joined in the conspiracy within -- knowingly joined
22 in the conspiracy within or reasonably near the same time
23 period.

24 A conspiracy may exist even if a conspirator does not
25 agree to commit or facilitate each and every part of the

Charge to the Jury

1 substantive offense.

2 The partners in a criminal plan must agree to pursue
3 the same criminal objective, and may divide up the work, yet
4 each is responsible for the acts of the other.

5 The essence of the crime of conspiracy is an
6 agreement to commit a criminal act. But there does not have to
7 be evidence that the agreement was specific or explicit. By
8 its very nature, a conspiracy is clandestine and covert;
9 thereby frequently resulting in little direct evidence of such
10 an agreement. Therefore, the government may prove a conspiracy
11 by circumstantial evidence. Circumstantial evidence tending to
12 prove a conspiracy may consist of the defendant's relationship
13 with other members of the conspiracy, the length of the
14 conspiracy, the defendant's attitude and conduct, and the
15 nature of the conspiracy.

16 Instruction number 33: The second and third elements
17 of the crime of conspiracy are that the defendant knew the
18 purposes of the conspiracy and with knowledge of those purposes
19 deliberately joined the conspiracy.

20 One may be a member of a conspiracy without knowing
21 the full scope of the conspiracy or all of its members, and
22 without taking part in the full range of its activities or over
23 the whole period of its existence. The conspiracy does not
24 need a discrete and identifiable organizational structure. The
25 fact that a conspiracy is loosely-knit, haphazard, and

Charge to the Jury

1 ill-conceived does not render it any less a conspiracy. The
2 government need not prove that the defendant knew the
3 particulars of the conspiracy or all of his co-conspirators.
4 It is sufficient if the defendant played only a minor part in
5 the conspiracy. Thus, a variety of conduct can constitute
6 participation in a conspiracy. Moreover, a defendant may
7 change his role in the conspiracy.

8 Once it has been shown that a conspiracy exists, the
9 need only -- the evidence need only establish a slight
10 connection between the defendant and the conspiracy. The
11 government must produce evidence to prove the defendant's
12 connection beyond a reasonable doubt, but the connection itself
13 may be slight, because the defendant does not need to know all
14 of his co-conspirators, understand the reach of the conspiracy,
15 participate in all the enterprises of the conspiracy, or have
16 joined the conspiracy from its inception.

17 Presence at the scene of criminal activity is
18 material and probative in the totality of the circumstances in
19 determining the defendant's participation in the conspiracy.
20 Mere presence alone is not sufficient to prove participation in
21 the conspiracy, but proof beyond a reasonable doubt of
22 presence, coupled with an act that advances the conspiracy is
23 sufficient to establish participation in the conspiracy.

24 The statements and actions of an alleged
25 co-conspirator may be considered in determining the existence

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1 of the conspiracy. The jury may find knowledge and voluntary
2 participation from evidence of presence when the presence is
3 such that it would be unreasonable for anyone other than a
4 knowledgeable participant in the conspiracy to be present.

5 Instruction number 34: The fourth element of the
6 crime of conspiracy is that at some time during the existence
7 or life of the conspiracy, agreement, or understanding, one of
8 its alleged members knowingly performed an overt act and did so
9 in order to further or advance the purpose of the agreement.
10 An overt act is an act, even one which may be entirely innocent
11 when considered alone, but which is knowingly committed by a
12 conspirator in an effort to accomplish some object of the
13 conspiracy. Each conspirator is liable for overt acts of every
14 other conspirator done in furtherance of the conspiracy,
15 whether the acts occurred before or after he joined the
16 conspiracy.

17 Instruction number 35: The crimes that the defendant
18 allegedly agreed to commit, bribery concerning programs
19 receiving federal funds, and honest services mail and wire
20 fraud, are known as the objects of the conspiracy. You must
21 unanimously agree that the conspiracy had at least one of these
22 objects, and you must unanimously agree -- you must unanimously
23 agree as to which object the government has proved beyond a
24 reasonable doubt. The government is not required to prove more
25 than one of the objects charged.

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1 Instruction number 36: Count Two charges that the
2 defendant committed honest services mail fraud through bribery.
3 Specifically, Count Two charges that on or about August 17,
4 2020, in advancing, or furthering, or carrying out the scheme
5 to defraud, a copy of the order granting request for
6 restoration of firearms in the matter of In Re Rick Tariq
7 Rahim, Case Number 19-L-1242, was mailed by the Culpeper County
8 Circuit Court Clerk's office to the Virginia State Police.

9 To sustain its burden as to Count Two, the government
10 must prove the following four elements beyond a reasonable
11 doubt.

12 First, that the defendant knowingly devised or
13 participated in a scheme to defraud the public of its right to
14 the honest services of a public official through bribery as
15 charged in Count Two.

16 Second, that the scheme or artifice to defraud
17 involved a material misrepresentation, false statement, false
18 pretense, or concealment of material fact.

19 Third, that the defendant did so knowingly and with
20 the intent to defraud.

21 And fourth, that in advancing or furthering or
22 carrying out the scheme to defraud, the defendant used the
23 mails or interstate -- used the mails or an interstate carrier,
24 or caused the mails or an interstate carrier to be used.

25 Instruction number 37: Counts Three through Five

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1 charge that the defendant committed honest services wire fraud
2 through bribery. To prove Counts Three through Five, the
3 government must prove the following four elements beyond a
4 reasonable doubt.

5 First, that the defendant knowingly devised or
6 participated in any scheme to defraud the public of its right
7 to the honest services of a public official through bribery, as
8 charged in Counts three through Five.

9 Second, that the scheme or artifice to defraud
10 involved a material misrepresentation, false statement, false
11 pretense, or concealment of material fact.

12 Third, that the defendant did so knowingly and with
13 the intent to defraud.

14 Fourth, that in advancing or furthering or carrying
15 out this scheme to defraud, the defendant transmitted, or
16 caused to be transmitted, any wiring, signal, or sound by means
17 of a wire communication in interstate commerce, or caused the
18 transmission of any writing, signal, or sound of any kind by
19 means of a wire communication or interstate commerce.

20 Instruction number 38: As to the fourth element of
21 the honest services wire fraud, Counts Three through Five
22 charge that in advancing, or furthering, or carrying out this
23 scheme to defraud, the following writings, signals, or sounds
24 by means of a wire communication were transmitted or caused to
25 be transmitted in interstate commerce: Count Three, July 7,

Charge to the Jury

1 2020, text message from Jenkins to Rahim stating, new judge
2 hasn't done any that just sign off and weren't on court docket.
3 Wants to talk to Paul about it for now and for future
4 procedures. Good thing is that he didn't seem too concerned
5 about sliding one in during the judicial emergency period. I'm
6 heading over to catch Paul.

7 Count Four, January 4, 2023, text message from
8 Jenkins to Rychlik stating, see you little later this morning.

9 And Count Five, October 7, 2022, deposit of check
10 number 45898 in the account of -- in the amount of \$5,000,
11 drawn on Virginia National Bank, account number ending 701,
12 held in the name of Yona Systems Group into Blue Ridge Bank
13 account number ending in 133, held in the name of Scott Jenkins
14 For Sheriff.

15 Instruction number 39: Each use of the mails and
16 each transmission by wire communication in interstate commerce
17 to advance, or to further, or to carry out the scheme or plan
18 to defraud is a separate violation of the mail or wire fraud
19 statutes.

20 Instruction number 40: The first element of both
21 honest services mail fraud charged in Count Two, and honest
22 services wire fraud, charged in Counts Three through Five, is
23 that the defendant knowingly devised and participated in a
24 scheme to defraud the public of its right to a public
25 official's honest services through bribery.

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1 A scheme is any plan or course of action formed with
2 the intent to accomplish some purpose. Thus, the government
3 must prove beyond a reasonable doubt that the defendant devised
4 or participated in a plan or course of action involving bribes
5 given or offered to a public official or solicited or accepted
6 by a public official.

7 It is not necessary for the government to prove that
8 the defendant was actually successful in defrauding anyone. An
9 unsuccessful scheme or plan to defraud is as illegal as a
10 scheme or plan that is ultimately successful.

11 Instruction number 41: Public officials, such as
12 sheriffs, owe a duty of honesty and loyalty to act in the
13 public's interest, not for that official's own enrichment.
14 When a public official devises or participates in a bribery
15 scheme, that official defrauds the public of its right to the
16 official's honest, faithful, and disinterested services.

17 Instruction number 42: The term bribery for purposes
18 of Counts Two through Five involves the exchange of a thing of
19 value for official action by a public official. Bribery
20 involves a *quid pro quo*, meaning this for that, or these for
21 those. Bribery also includes offers and solicitations of
22 things of value in exchange for official action; that is, for a
23 public official, bribery includes the public official's
24 solicitation or agreement to accept the thing of value in
25 exchange for official action, whether or not the payor actually

Charge to the Jury

1 provides the thing of value and whether or not the public
2 official ultimately performs the requested official action or
3 intends to do so.

4 Where the thing or things of value solicited or
5 received by a public official are something other than a
6 campaign contribution, the government must prove a *quid pro quo*
7 or a solicitation or agreement to engage in a *quid pro quo*.

8 Where the thing or things of value solicited or
9 received by a public official are the payment of campaign
10 contributions, the government must prove a meeting of the minds
11 on the explicit *quid pro quo*. This means that the government
12 must prove that the payments are made in return for an explicit
13 promise or understanding by the public official to perform or
14 not to perform one or more specific official acts.

15 While the *quid pro quo* for a campaign contribution
16 must be explicit, it does not have to be express. Political
17 contributions may be the subject of an illegal bribe even if
18 the terms are not formalized in writing or spoken out loud.
19 Explicit refers not to the form of the agreement between the
20 payor and the public official, but the degree to which the
21 payor and the public official were aware of its terms. The
22 public official and the payor need not state the *quid pro quo*
23 in express terms, for otherwise the law's effect would be
24 frustrated by knowing winks and nods.

25 Rather, the intent to exchange may be established by

Charge to the Jury

1 circumstantial evidence, based on the defendant's words,
2 conduct, acts, and all surrounding circumstances disclosed by
3 the evidence and the rational or logical inferences that may be
4 drawn from them.

5 Instruction number 43: Bribery involves the exchange
6 of a thing of value for official action by a public official.
7 The term official act means any decision or action on any
8 question or matter, which may at any time be pending, or which
9 may by law be brought before the public official, in such
10 public official's official capacity, or in such official's
11 place of trust or profit. This has two parts to it.

12 First, the question or matter must be specific and
13 focused and involve a formal exercise of governmental power.

14 Second, the public official must make or agree to
15 make a decision, or take or agree to take an action on that
16 question or matter. A decision or action on a qualifying step
17 for a question or matter is an official act. An official act
18 also includes a public official exerting pressure on another
19 public official to perform an official act or providing advice
20 to another official knowing or intending such advice will form
21 the basis of an official act by another official.

22 Setting up a meeting, hosting an event, or talking to
23 another official, without more, does not qualify as a decision
24 or action on a question or matter. Simply expressing support
25 at a meeting, event, or call, or sending a subordinate to such

Charge to the Jury

1 a meeting, event, or call, similarly does not qualify as --
2 similarly does not qualify as a decision or action on a
3 question or matter, as long as the official does not intend to
4 exert pressure -- exert pressure on another official to provide
5 advice, knowing or intending such advice to form the basis of
6 an official act.

7 You may, however, consider evidence that a public
8 official set up a meeting -- that a public official set up a
9 meeting, hosted an event, talked to another official, expressed
10 support, or sent a subordinate as evidence of an agreement to
11 take an official act. You may consider all the evidence in
12 this case, including the nature of the transaction, in
13 determining whether the conduct involved an official act.

14 Instruction number 44: Because people rarely act for
15 a single purpose, a public official need not have solicited or
16 accepted the thing of value only in exchange for the
17 performance of an official action. If you find beyond a
18 reasonable doubt that a public official solicited or received a
19 thing of value at least in part in exchange for the performance
20 of an official action, then it makes no difference that the
21 public official may have also had another lawful motive for
22 soliciting or accepting the thing of value.

23 Instruction number 45: The government also need not
24 prove that the thing of value caused the public official to
25 change his position. It is not a defense to claim that a

Charge to the Jury

1 public official would have lawfully performed the official
2 action in question anyway, regardless of the bribe. It is also
3 not a defense that the official action was actually lawful,
4 desirable, or even beneficial to the public. The offense of
5 honest services fraud is not concerned with the wisdom or
6 results of the public official's decisions or actions, but
7 rather, with the manner in which the public official makes his
8 decisions or takes his actions.

9 The second element of both honest services mail fraud
10 charged in Count Two and honest services wire fraud charged in
11 Counts Three through Five, is that the scheme or artifice to
12 defraud involved a false or fraudulent statement,
13 representation, promise, or pretense that is material, or the
14 concealment of a material fact.

15 A statement, representation, promise, pretense, or a
16 concealed fact is material if it has a natural tendency to
17 influence or is capable of influencing the decision of the
18 public entity to which it is addressed. The government can
19 prove materiality in either of two ways.

20 First, a statement, representation, promise,
21 pretense, or concealed fact is material if a reasonable person
22 would attach importance to its existence or nonexistence in
23 deciding how or whether to act in the transaction in question.

24 Second, a statement, representation, promise,
25 pretense, or a concealed fact could be material, even though an

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1 unreasonable person would rely on it, if the person who made
2 the statement or concealed fact knew or had reason to know his
3 or her victim was likely to rely upon it.

4 In determining materiality, you should consider the
5 naivety, carelessness, negligence, or stupidity of a victim
6 does not excuse criminal conduct, if any -- does not excuse
7 criminal conduct, if any, on the part of the defendant.

8 Instruction number 47: The third element of both
9 honest services fraud charged in Count Two and honest services
10 wire fraud -- honest services mail fraud charged in Count Two
11 and honest services wire fraud charged in Counts Three through
12 Five is that the defendant participated in the scheme knowingly
13 and with the intent to defraud.

14 The defendant acts with the intent to defraud if he
15 acts knowingly and with the specific intent to deceive for the
16 purpose of depriving the public and the government of their
17 right to a public official's honest services. The deceit may
18 consist of the concealment of things of value that the public
19 official has solicited or received, or the public official's
20 implicit false pretense to his government employer that the
21 official has not accepted things of value in return for the
22 official action.

23 Instruction number 48: The fourth element of honest
24 services mail fraud, charged in Count Two, is the use of the
25 United States mails of an interstate carrier.

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1 The government must prove beyond a reasonable doubt,
2 however, that the mails of an interstate carrier were, in fact,
3 used in some manner to further, or to advance, or to carry out
4 the scheme to defraud. The government must also prove that the
5 use of the mails or the interstate carrier would follow in the
6 ordinary course of business or events and that the use of the
7 mails or the interstate carrier by someone was reasonably
8 foreseeable.

9 The government is not required to prove that the
10 defendant actually mailed anything or the defendant even
11 intended that the mails would be used to further, or to
12 advance, or to carry out the scheme or plan to defraud. Nor is
13 it necessary for the government to prove that the item itself
14 mailed was false or fraudulent or contained any false or
15 fraudulent statement, representation, or promise, or contained
16 any request for money or a thing of value. The government must
17 prove beyond a reasonable doubt, however, that the use of the
18 mails or the use of the interstate carrier furthered, or
19 advanced, or carried out, in some way the scheme or plan to
20 defraud.

21 Instruction number 49: The fourth element of honest
22 services wire fraud, charged in Counts Three through Five, is
23 use of a wire communication facility in interstate commerce.

24 The government must prove beyond a reasonable doubt,
25 however, that a transmission by a wire communication facility

Charge to the Jury

1 in interstate commerce was, in fact, used in some manner to
2 further, or to advance, or to carry out the scheme to defraud.
3 The government must also prove that the use of the wire
4 communication in interstate commerce would follow in the
5 ordinary course of business, or events, or that the use of the
6 wire communication facility in interstate commerce by someone
7 was reasonably foreseeable.

8 The government need not prove that the defendant
9 actually used a wire communication in interstate commerce or
10 that the defendant even intended that anything be transmitted
11 in interstate commerce by means of a wire communication --
12 excuse me -- or that the defendant even intended that anything
13 be transmitted in interstate commerce by means of a wire
14 communication to further, or to advance, or to carry out the
15 scheme or plan to defraud. Nor is it necessary for the
16 government to prove that the information transmitted by means
17 of wire communication in interstate commerce itself was false
18 or fraudulent or contained any false or fraudulent pretense,
19 representation, or promise.

20 The government must prove beyond a reasonable doubt
21 that the use of the wire communication in interstate commerce
22 furthered, or advanced, or carried out, in some way, the scheme
23 or plan to defraud.

24 Instruction number 50: Counts Six through Twelve
25 charge that in the Western District of Virginia or elsewhere,

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1 the defendant, Scott Howard Jenkins, being an agent of Culpeper
2 County or the Culpeper County sheriff's office, a local
3 government or an agency thereof, both of which received
4 benefits exceeding \$10,000 under federal programs involving any
5 form of federal assistance in the relevant fiscal years ending
6 on June 30, 2019, June 30, 2020, June 30, 2021, June 30, 2022,
7 and June 30, 2023, did corruptly solicit or demand for his own
8 benefit or did solicit or did agree to accept things of value
9 from the persons specified below, intending to be influenced or
10 rewarded in connection with a specific business, transaction,
11 or series of transactions, of Culpeper County or the Culpeper
12 County sheriff's office, involving something of value of \$5,000
13 and more described below, in violation of 18 United States
14 Code, Section 666.

15 Count Six charges that in -- that from in or around
16 July 2019 through in or around May 2021, Scott Howard Jenkins
17 did corruptly solicit or demand for his own benefit or did
18 accept or agree or accept -- did accept or agree to accept
19 approximately \$25,000 from Rick Rahim for the appointment of
20 Rick Rahim as an auxiliary deputy sheriff or Rick Rahim's
21 petition to restore his firearm rights.

22 Count Seven charges that from in or around April of
23 2019 through in or around March 2020, Scott Howard Jenkins did
24 corruptly solicit or demand for his own benefit or did accept
25 or agree to accept approximately \$20,000 from Fredric Gumbinner

Charge to the Jury

1 for the appointment of Fredric Gumbinner as an auxiliary deputy
2 sheriff.

3 Count Eight charges that from in or around August
4 2022 through in or around September 2022, Scott Howard Jenkins
5 did corruptly solicit or demand for his own benefit or did
6 accept or agree to accept approximately \$5,000 from James
7 Metcalf for the appointment of James Metcalf as an auxiliary
8 deputy sheriff.

9 Count Nine charges that in or around September 2022
10 through in or around October 2022, Scott Howard Jenkins did
11 corruptly solicit or demand for his own benefit or did accept
12 or agree to accept \$5,000 from Thomas Cooper for the
13 appointment of Thomas Cooper as an auxiliary deputy sheriff.

14 Count Ten charges that from in or around October 2022
15 through in or around November of 2022, Scott Howard Jenkins did
16 corruptly solicit or demand for his own benefit or did accept
17 or agree to accept \$5,000 from Undercover Agent 1, Jerry McKee,
18 for the appointment of Undercover Agent 1 as an auxiliary
19 deputy sheriff.

20 Count 11 charges that from in or around November 2022
21 through in or around December 2022, Scott Howard Jenkins did
22 corruptly solicit or demand for his own benefit or did accept
23 or agree to accept \$10,000 from Undercover Agent 2, Mike, for
24 the appointment of Undercover Agent 2 as a deputy -- auxiliary
25 deputy sheriff.

Charge to the Jury

1 Count 12 charges that from in or around September
2 2022 through in or around December of 2022, Scott Howard
3 Jenkins did corruptly solicit or demand for his own benefit or
4 did solicit -- or agree to accept -- did accept or agree to
5 accept approximately \$5,000 from Philip Howell for the
6 appointment of Philip Howell as an auxiliary deputy sheriff.

7 Instruction number 51: To prove the crime of bribery
8 concerning programs receiving federal funds as charged in
9 Counts Six through Twelve, the government must prove the
10 following five essential elements beyond a reasonable doubt.

11 We have four elements listed, counsel.

12 Must prove the following four essential elements
13 beyond a reasonable doubt.

14 First, that the defendant was, at the time alleged,
15 an agent of a local government or agency that received, in any
16 one-year period that includes commission of the offense,
17 benefits in excess of \$10,000 under a federal program involving
18 any form of assistance. The parties have stipulated that both
19 Culpeper County, a local government, and the Culpeper County
20 sheriff's office, an agency thereof, received benefits in
21 excess of \$10,000 under one or more federal programs in the
22 fiscal years ending June 30, 2019, June 30, 2020, June 30,
23 2021, June 30, 2022, and June 30, 2023.

24 Second, that the defendant solicited or demanded for
25 the benefit of any person, or accepted or agreed to accept,

Charge to the Jury

1 anything of value from any person.

2 Third, that the defendant intended to be influenced
3 or rewarded in connection with any business, transaction, or
4 series of transactions of a local government or agency
5 involving anything of value of \$5,000 or more.

6 And four, that the defendant did so corruptly.

7 Instruction number 52: Agent means a person
8 authorized to act on behalf of any other person or a
9 government, and in the case of an organization or government,
10 includes a servant or employee, partner, director, officer,
11 manager, or representative.

12 Instruction number 53: The phrase business or
13 transaction or series of transactions refers to the business of
14 the covered entity; here, Culpeper County or the Culpeper
15 County sheriff's office. The business, transaction, or series
16 of transactions must be a discrete and actionable -- must be a
17 discrete actionable item under the purview of the covered
18 entity. It cannot be something as general as broad policy,
19 policy matters relevant to the covered entity. The terms
20 business or transaction do not include a typical meeting, call,
21 or event without more.

22 The following actions performed or agreed to be
23 performed by the public official, without more, are not
24 sufficient to establish a violation of 18 United States Code,
25 Section 666: Setting up a meeting, hosting an event, talking

Charge to the Jury

1 to another official, sending a subordinate to a meeting, or
2 simply expressing support for a constituent. You may, however,
3 consider evidence that a public official took these -- took
4 those actions as evidence of a corrupt agreement and the
5 government may satisfy its burden by proving that the public
6 official took those actions in order to exert pressure on
7 another official, or to provide advice to another official,
8 knowing or intending such advice to form the basis for action
9 by that official.

10 You may consider all the evidence in the case,
11 including the nature of the transaction, in determining whether
12 the conduct constituted a violation of the statute.

13 Instruction number 54: The government must prove
14 that the value of the business, transaction, or series of
15 transactions at issue was \$5,000 or more. You may consider the
16 value of the alleged bribe as evidence of the value of the
17 business, transaction, or series of transactions; however, you
18 must still find that the value of the business, transaction, or
19 series of transactions itself was \$5,000 or more, and you may
20 use any evidence in the case in determining value.

21 Instruction number 55: The government does not have
22 to prove that federal funds were involved in the bribery
23 transaction or that the bribe had any particular influence on
24 federal funds.

25 Instruction number 56: An act is done corruptly if

Charge to the Jury

1 it is done with the intent to engage in some more or -- in some
2 more or less specific *quid pro quo*; that is, to give a specific
3 benefit in return for a payment, or to be induced to commit a
4 specific act. A payment is solicited, demanded, accepted, or
5 agreed to be accepted with corrupt intent only if it was done
6 with the intent to be corrupted. Not every payment made to
7 influence or reward an official is made with intent to be
8 corrupted. One has the intent to be corrupted only if he
9 solicits, demands, accepts, or agrees to accept a payment with
10 the intent to engage in a fairly specific *quid pro quo* with the
11 payor. The defendant must have intended to engage in some
12 specific act or omission or course of action or inaction in
13 return for the payment charged in the superseding indictment.
14 Where the things of value -- where the thing or things of value
15 solicited or received by a public official are the payment of
16 campaign contributions, the government must further prove a
17 meeting of the minds on the explicit *quid pro quo*.

18 Instruction number 57: To influence means that a
19 payment was made before the official action. To reward means
20 that a payment was made afterwards. Payments made to influence
21 official action and to reward official action are both
22 prohibited, but payments made without corrupt intent are not
23 criminal acts.

24 Payments made with no more than some generalized hope
25 or expectation of ultimate benefit on the part of the donor,

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1 sometimes referred to as goodwill gifts, are not bribes, since
2 they are not made with the intent to engage in a specific *quid*
3 *pro quo* with an official.

4 Ladies and gentlemen, those are the 57 instructions
5 of the Court. Thank you very much for your attention. It is
6 now ten till 1. Can you all be back by a quarter till 2?
7 That's a little bit short of an hour -- or do you want to go
8 until 2:00? And then we're going to have our closing arguments
9 and then we'll go -- then you all will begin to deliberate.

10 MALE JUROR: Quarter of 2 is fine.

11 THE COURT: Quarter of 2 is spoken. So we'll all be
12 back and be ready to go at quarter till 2.

13 So recess the jury until a quarter to 2.

14 (*Jury out, 12:54 p.m.*)

15 THE COURT: You all have a seat. I want to talk
16 about instruction 51. But otherwise, any other -- any
17 objections to the instructions given?

18 MS. CHOY: No, Your Honor.

19 THE COURT: From the defendant?

20 Okay. Instruction 51, no matter how many times we
21 read these things -- it said the following five essential
22 elements, and then we listed four.

23 MS. CHOY: I apologize for the oversight, Your Honor.

24 THE COURT: Well, no, no, no. Here's what I'd like
25 you all to do. I simply interlined it on the set of

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1 instructions that I gave to the jury. I'll interline it on
2 this set of instructions. But what I'd like you to do -- so it
3 actually works out -- can you all just double-check the
4 instructions and make sure that we have not somehow left off an
5 element? If we have, then we can give it to them.

6 Ms. Choy?

7 MS. CHOY: Your Honor, I actually know why that
8 happened, because as I was editing, I was thinking about
9 breaking out the agency element into a separate element from
10 the federal funds, and then I decided not to make that change,
11 but I must not have corrected the five versus four.

12 THE COURT: Okay. So we're satisfied it's four
13 elements?

14 MS. CHOY: Yes, Your Honor.

15 THE COURT: So I'll interline it on this that will go
16 back with them, so it will be corrected there.

17 With that, why don't we come back -- we'll be ready
18 to go at 1:45. And if for some reason we think we need to come
19 back in any earlier, then we will. Otherwise, we'll stand in
20 recess until 1:45.

21 (Recess.)

22 THE COURT: Back on the record in the matter of
23 *United States v. Jenkins*. Let the record reflect the
24 government is present by its counsel. The defendant likewise
25 is present by counsel.

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1 Just to make sure that I'm clear, I got the verdict
2 form that was sent over with the joint edits. We printed it
3 out and gave it to you all. I want to make sure there's no
4 objection, if you've had a chance to review it and make sure
5 it's the verdict form you wanted.

6 No objection from the government, Ms. Choy?

7 MS. CHOY: None, Your Honor.

8 THE COURT: Mr. Caleb?

9 MR. CALEB: No objection.

10 THE COURT: Okay. All right. So we'll go over that.

11 Also, we forwarded around to you all the forfeiture
12 instructions. And during closing, Ms. Curry-Ledbetter will
13 finalize the verdict form. It's going to depend upon how many
14 counts there are. It's easier to take things away than to add
15 them -- it's quicker to take them away. So she's going to do a
16 verdict form with everything.

17 What I'd like to do is -- I know everyone is going to
18 exhale once the jury goes out -- is just to take the time that
19 we need to make sure those instructions are what we want them
20 to be so that when the jury comes back, if there is a guilty
21 verdict, we can make any changes that are necessary promptly,
22 because we're going to have to tell them they can't go
23 anywhere, and send them back out.

24 Otherwise, are we ready for the jury?

25 MS. CHOY: Yes, Your Honor.

Closing Argument by Ms. Choy

1 MR. ANDONIAN: Yes, Your Honor.

2 THE COURT: Let's bring the jury in.

3 (*Jury in, 1:55 p.m.*)

4 THE COURT: Ladies and gentlemen, please have a seat.

5 Ladies and gentlemen, we have come to that point in
6 the trial where it is time for counsel to make their closing
7 arguments.

8 Ms. Choy, I'll give the government the first
9 argument.

10 MS. CHOY: Thank you, Your Honor.

11 Is the presentation being published to the jury?
12 Thank you.

13 CLOSING ARGUMENT BY MS. CHOY

14 Ladies and gentlemen, good afternoon. When Ms. Smith
15 stood before you last week, she told you that this is a case
16 about a corrupt sheriff, a sheriff who took an oath to uphold
17 the law, but instead chose to break it; a sheriff who was
18 duty-bound to serve and protect the people of Culpeper County,
19 the people who elected him, but instead chose to serve himself;
20 a sheriff who exploited the powers of his office to enrich
21 himself and to raise funds for his campaign so that he could
22 stay in power.

23 Well, now, ladies and gentlemen, you have seen the
24 evidence. And what you've seen over the course of this trial
25 shows that for years Scott Jenkins took bribes, envelope after

Closing Argument by Ms. Choy

1 envelope stuffed with cash, checks to his re-election campaign.
2 And those envelopes full of cash, those checks, they came from
3 wealthy businessmen, people who had no real law enforcement
4 training, no real experience, no connection to Culpeper County,
5 no commitment to public service. All they wanted was a badge.
6 And for a starting price of \$5,000, Scott Jenkins was happy to
7 oblige. That, ladies and gentlemen, is bribery, plain and
8 simple.

9 Now, Judge Ballou just instructed you on the law of
10 bribery, and there were a lot of details. I will go over those
11 details with you in a little bit. But the thing to remember is
12 that at bottom, the crime of bribery is a *quid pro quo*, that
13 Latin phrase you've now heard so many times. It means "this
14 for that," a thing of value in exchange for an official act.
15 And let me make one point about the law clear right now,
16 because that *quid*, that thing of value, it can be anything of
17 value. It can be money. It can be a campaign contribution.
18 Just because something is a campaign contribution does not mean
19 it's not a bribe. The question then becomes, was it given as
20 part of an explicit *quid pro quo*. That question is at the
21 heart of what you must decide in this case. It's at the bottom
22 of every charge in this case.

23 So what I'm going to do now is walk you through the
24 evidence and show you why it proves beyond a reasonable doubt
25 that Scott Jenkins engaged in a *quid pro quo*. And after that,

Closing Argument by Ms. Choy

1 I'm going to circle back to the charges in this case and go
2 through each and every element with you and explain how the
3 government has proven those elements beyond a reasonable doubt.

4 So let's start with the facts. Let's go back in time
5 to the summer of 2019. Scott Jenkins is running for
6 re-election and it's a contested race. He has an opponent. He
7 needs money. So he reaches out to his old pal, his right-hand
8 man, Kevin Rychlik. He says he wants to build his war chest.
9 And remember, by this time, Scott Jenkins and Kevin Rychlik
10 have had a corrupt relationship for years. Kevin Rychlik would
11 go out and recruit bribe payers, he would bring them to Scott
12 Jenkins, and they would give him money in exchange for a badge.
13 So when Scott Jenkins reached out to Kevin Rychlik about his
14 war chest, Kevin Rychlik knew exactly what he wanted him to do,
15 and that's what he did. He brought in Rick Rahim, the big
16 fish. And he sets up a meeting, a meeting between Scott
17 Jenkins and Rick Rahim. That meeting took place on July 31st,
18 2019. And during that meeting, Scott Jenkins and Rick Rahim
19 reached a corrupt agreement. Rick Rahim told you exactly what
20 that corrupt agreement consisted of. Scott Jenkins agreed to
21 help him with the restoration of his firearms rights, to help
22 him with his concealed carry permit, and to swear him in as a
23 deputy. And in exchange, Rick Rahim agreed to give him money
24 and in-kind contributions to his campaign.

25 You heard from the other participant in that meeting,

Closing Argument by Ms. Choy

1 Kevin Rychlik. He said the exact same thing. In that meeting,
2 Scott Jenkins agreed to help Rick Rahim with his firearms
3 rights and to issue him a badge, and in exchange, Rick Rahim
4 agreed to provide monetary support and in-kind contributions.
5 So there's your first *quid*, your first thing of value, \$15,000
6 in cash that was given after that meeting from Rick Rahim to
7 Scott Jenkins in a manila envelope.

8 A few weeks later, September 19th, 2019, Scott
9 Jenkins and Rick Rahim meet again. They go out to dinner,
10 Ruth's Chris Steakhouse. And at that dinner, Rick Rahim hands
11 Scott Jenkins another envelope full of cash; this time \$10,000.
12 At that same meeting, Rick Rahim gives Scott Jenkins two checks
13 totaling \$35,000, this purported loan. Let's put that to the
14 side for a moment and focus on the cash. Because a couple of
15 weeks later, Rick Rahim recruits Fred Gumbinner into the
16 corrupt scheme. He gets \$20,000 from Fred Gumbinner. And Fred
17 Gumbinner told you that he intended Rick Rahim to give that
18 money to Scott Jenkins in exchange for a badge. So Rick Rahim
19 reaches out to Scott Jenkins. He says, I have been busy
20 getting you more donors. Have 20K cash in hand from friends
21 from the campaign. The two of them meet again for dinner, and
22 Rick Rahim gives that cash to Scott Jenkins, \$45,000.

23 Now, Scott Jenkins does not dispute that he received
24 all that cash from Rick Rahim, and he doesn't dispute that he
25 never reported any of it as a campaign contribution.

Closing Argument by Ms. Choy

1 So move ahead to late 2021. Scott Jenkins is
2 thinking ahead again to his re-election campaign. He reaches
3 out to Kevin Rychlik. He wants to build the war chest. What
4 he doesn't know is by this time Kevin Rychlik is talking to the
5 government. And in the summer of 2022, Kevin Rychlik begins
6 his active cooperation with the government. He keeps doing
7 what he's been doing for years, recruiting bribe payers and
8 bringing them to Scott Jenkins to buy badges. But this time,
9 he's wearing a wire, and he's reporting all of his activities
10 back to the FBI. And what those tapes, those recordings that
11 Kevin Rychlik made show is that Scott Jenkins is running a
12 well-oiled bribery machine. Each time is pretty much the same.
13 Kevin Rychlik finds a bribe payer. They send the driver's
14 license to Pete Siebel to run a brief background check. Scott
15 Jenkins signs off on the oath order. The bribe payer travels
16 down to Culpeper. They meet with the sheriff, get a tour of
17 the sheriff's office, maybe they go to lunch. And that bribe
18 payer has brought with them their cash bribe or their check
19 because they know that that's the deal. At some point during
20 the day, the bribe payer hands that money to Scott Jenkins.
21 Now remember, each of the bribe payers you heard from told you
22 they understood full well that this was an exchange, and they
23 told you that when they handed that money to Scott Jenkins, he
24 didn't bat an eye. He was expecting it. That's because he
25 knew it was an exchange too. And then, like clockwork, the

Closing Argument by Ms. Choy

1 sheriff gives them a badge.

2 So let's talk about these bribe payments. September
3 7, 2022, Jim Metcalf gives a check for \$5,000 to Scott
4 Jenkins's campaign. October 26, 2022, Tom Cooper, another
5 check, also \$5,000, made out to Scott Jenkins's campaign.

6 November 14th, 2022, the first undercover agent, Jerry McKee,
7 he gives Scott Jenkins an envelope which Scott Jenkins puts in
8 his breast pocket. And what's inside that envelope? \$5,000 in
9 cash. December 26, 2022, the second undercover agent, that's
10 the one who goes by the name Mike. Now, Mike was a little
11 different because his backstory is that he's a convicted felon
12 who wants to carry a gun, and he's willing to pay extra to make
13 that happen. Kevin Rychlik tells that to Scott Jenkins. Scott
14 Jenkins says, I'll just personally walk it through. Then he
15 tells Pete Siebel not to run the usual criminal history check.
16 Scott Jenkins approves Mike to be sworn in anyway, and when
17 Mike comes to Culpeper, he gives him \$10,000 in cash. The next
18 day, Phil Howell hands Scott Jenkins an envelope with \$5,000 in
19 cash. Remember, he said that was in \$100 bills that he had
20 recently taken out of the bank. The last one, Rubar Sandi, on
21 January 4th, 2023, hands Scott Jenkins a gift bag containing
22 \$5,000 in cash.

23 So there, ladies and gentlemen, you have your *quid,*
24 your things of value, \$80,000, the vast majority of which was
25 in cash that never went into the campaign account and was never

Closing Argument by Ms. Choy

1 reported on Scott Jenkins For Sheriff's campaign finance
2 disclosures. Scott Jenkins doesn't deny any of that.

3 So now let's talk about the quo. Let's start with
4 Rick Rahim. The first thing Rahim wanted was help with his
5 firearms restoration permit. Scott Jenkins delivered on his
6 end of the bargain. He created a fake lease agreement so that
7 Rick Rahim could make it look like he lived in Culpeper. It
8 was for an old farmhouse belonging to Scott Jenkins's brother.
9 And Scott Jenkins knew full well that he didn't live there.
10 You heard him on a recorded conversation saying just this. But
11 he aligned his story with Rick Rahim so that the two of them
12 could make it look as though Rick was living in that farmhouse.
13 Here's Scott Jenkins describing the property. And you heard
14 Scott Jenkins today say, well, it was just some details. But
15 it's not just the property. It's the house itself. Old white
16 farmhouse and barn; if he was living there, wouldn't he know
17 that? And Rick Rahim also wanted to align the story just in
18 case it came up. But even though he knew that Rick Rahim
19 didn't live in Culpeper, didn't meet that statutory
20 requirement, Scott Jenkins personally walked that permit into
21 the Culpeper County Clerk's office. Sorry, I should have said
22 petition. And Scott Jenkins assures the Assistant
23 Commonwealth's Attorney that Rick Rahim is, indeed, living in
24 his brother's farmhouse. And then he goes to work pressuring
25 other local officials to push that petition through. And it

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1 works. Rick Rahim gets his firearms rights restored.

2 The second thing Rick Rahim wants is a badge. He
3 told you why he wanted that. He wanted to get professional
4 courtesy to get out of speeding tickets, and he wanted to be
5 able to carry a firearm in all 50 states without having to
6 apply for a permit. Scott Jenkins made that happen, too. He
7 swore in Rick Rahim and he issued him a badge and official
8 credentials. He even issued him a county firearm.

9 The next bribe payer is Fred Gumbinner. Fred
10 Gumbinner wanted a badge. Scott Jenkins made that happen.

11 And now let's go to the fall of 2022. Each of these
12 bribe payers wanted the same thing, a badge. And remember,
13 there's that longstanding corrupt relationship between Kevin
14 Rychlik and Scott Jenkins, where Scott Jenkins will swear in
15 anyone that Kevin Rychlik brings in for money. And that's
16 exactly what happened with these six men.

17 Jim Metcalf: The same day he gives the check, he
18 gets his badge. Tom Cooper: Same day he gets the check, he
19 gets his badge. Undercover Agent 1, Jerry McKee meets the
20 sheriff for the first time, same day gets his badge.
21 Undercover Agent 2, same deal, meets the sheriff, pays his
22 bribe, gets his badge. Phil Howell, same story. Rubar Sandi,
23 meets the sheriff, pays his bribe, gets his badge.

24 Ladies and gentlemen, everyone involved in this
25 scheme, they knew the deal: A bribe for a badge. This was a

Closing Argument by Ms. Choy

1 *quid pro quo*, plain and simple.

2 Yesterday, Scott Jenkins took the stand, and he told
3 you a different story. And that story was full of lies. Now,
4 let's talk about why those were lies. But first, let's start
5 with who Scott Jenkins is, because he's told you a lot about
6 who he is. Scott Jenkins is someone who knows how to spin. He
7 knows how to tell a story to justify his actions after the
8 fact. Here he is talking about Rick Rahim and how he'd spin
9 that story if it ever came back to bite him.

10 (Audio playing.)

11 MS. CHOY: Ladies and gentlemen, Scott Jenkins told
12 you himself he's good at spinning a story. You also heard from
13 Pete Siebel, former deputy, that Scott Jenkins likes to use a
14 term called feasible deniability, also known as plausible
15 deniability. Scott Jenkins liked to be able to separate
16 himself from a situation so that he could deny it later. Pete
17 Siebel told you that Scott Jenkins likes to keep himself
18 layered away from bad acts. He likes to be able to blame
19 others. And you heard that over and over again yesterday when
20 Scott Jenkins took the stand. If it's about the general
21 orders, well, that's Chad McKnight's responsibility. If it's
22 background checks, that's on Pete Siebel. If it's the campaign
23 finance reports, go ask David Jones or David Myers. If it's
24 the selection of auxiliaries, point the finger at Kevin
25 Rychlik. It's never Scott Jenkins's responsibility. There's

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1 always someone else to blame.

2 Scott Jenkins also told you on a recorded
3 conversation that he likes to leave himself two or three
4 avenues out. He's always thinking ahead. He's always got an
5 escape plan. Here he is again talking about what he'd do if
6 Rick Rahim ever tried to make trouble for him.

7 (Audio playing.)

8 MS. CHOY: When you listen to this recording, ask
9 yourself: Do these sound like the words of an honest cop? Of
10 course not. Scott Jenkins told you who he is. Believe him.

11 So that's -- so the first lie that Scott Jenkins told
12 you is that the cash he took from Rahim was some kind of
13 business venture. That's just absurd on its face. Scott
14 Jenkins wants you to believe that Rick Rahim gave him \$45,000
15 in cash, having barely met him, as an investment in some kind
16 of T-shirt business. That's just not believable. But let's
17 look at the evidence.

18 From the beginning, it was clear that Rick Rahim was
19 being brought in for one thing and one thing only: Money.
20 Here's Scott Jenkins reaching out to Kevin Rychlik over and
21 over again in the summer of 2019 asking him to find donors.
22 And that's when Kevin Rychlik brings in Rick Rahim. And it was
23 equally clear what Rahim wanted in exchange: Help with his
24 firearms rights, and auxiliary credentials.

25 (Audio playing.)

Closing Argument by Ms. Choy

1 MS. CHOY: Sorry, ladies and gentlemen.

2 But you don't have to take it just from Kevin
3 Rychlik, because Scott Jenkins told you about this himself in a
4 recorded conversation. Scott Jenkins told you that he had
5 formed a corrupt agreement with Rahim. Let's listen to his
6 words.

7 (Audio playing.)

8 MS. CHOY: Doing more than I told him originally.
9 He's referring back to that corrupt agreement, and it's exactly
10 what Rick Rahim and Kevin Rychlik told you it was. That wasn't
11 the only time that Scott Jenkins talked about his corrupt
12 agreement with Rahim. Let's listen again.

13 (Audio playing.)

14 MS. CHOY: Ladies and gentlemen, this was a *quid pro*
15 *quo*. Scott Jenkins told you so himself.

16 But let's talk about some more lies that Scott
17 Jenkins told. Remember that \$35,000 loan? Scott Jenkins told
18 Rick Rahim that that was for the construction of his home.
19 That's right there in the documents. But he didn't use that
20 money for home construction. He deposited the checks into his
21 brother's bank account and then he laundered them through into
22 his own account in a series of cash and check transactions.
23 Then he used it to pay off his personal credit cards. Scott
24 Jenkins lied even to Rick Rahim. He never paid that money
25 back. And then he lied on his ethics disclosures where he said

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1 he didn't owe anyone more than \$5,000, and he lied to his bank
2 when he omitted that as a liability on his application. And by
3 the way, in that application, he acknowledged that he
4 understood that lying on that form is a crime.

5 Remember Special Agent Medearis's analysis. In that
6 time period, the fall of 2019, Scott Jenkins was in debt. He
7 was living beyond his means. He needed money to pay off his
8 credit cards. So he was highly motivated to take these bribes.

9 Let's talk about some more lies that Scott Jenkins
10 told you. Now, the testimony about Fred Gumbinner was a bit
11 confusing.

12 Here's what Scott Jenkins said: You never took
13 \$20,000 from Fred Gumbinner; that's your testimony?

14 No -- yes, uh-huh.

15 But ultimately, he claimed that that full \$45,000
16 from the fall of 2019 from Rick Rahim was some kind of
17 investment in a business venture, and he repeated that this
18 morning on the stand. That wasn't true. Let's see what the
19 evidence shows.

20 Here is a text message where Rick Rahim tells Scott
21 Jenkins he has the 20K in hand. He says, I have been busy
22 getting you more donors. Have 20K in hand from friends from
23 the campaign.

24 And here's Scott Jenkins's response. Not a word
25 about the money being for a business venture.

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1 Here are Scott Jenkins's texts with Kevin Rychlik the
2 day after he got Gumbinner's \$20,000. Again, nothing about a
3 business venture. But what happened next is even more
4 important, because Rick Rahim started to get frustrated that
5 Fred Gumbinner hadn't gotten sworn in yet after spending all
6 that money. So he reaches out to Scott Jenkins.

7 Here's his text: Rick giving me crap about Fred not
8 getting sworn in yet after putting up all that money.

9 And then he forwards text messages from Rick Rahim to
10 Scott Jenkins. I have to give him back 20K now and apologize
11 for being a liar. I told him it was a done deal. I look
12 ridiculous now.

13 And another one: We've had his 20K for six plus
14 months, Kevin. He's gotten nothing. He makes me millions of
15 dollars. I have to maintain credibility. That's my world. I
16 have to give the money back or I have to set a date for him. I
17 was sure you would at least put everything through by now and
18 all we needed was to get him sworn.

19 And after those text messages, Scott Jenkins calls
20 Kevin Rychlik. It's right there in the phone records. And
21 what does he say? Does he say, what are you talking about,
22 Kevin? I never got any money from Fred Gumbinner? Does he
23 say, there has been some kind of misunderstanding, we have to
24 give this gentleman his money back to clear this up?

25 No. He keeps the money and he gets Fred Gumbinner

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1 sworn in.

2 So after that phone call, Kevin Rychlik calls Rick
3 Rahim to give him the good news, and then Rick Rahim confirms
4 with Scott Jenkins. And sure enough, the next week, Fred
5 Gumbinner becomes an auxiliary deputy.

6 Ladies and gentlemen, this is devastating evidence of
7 bribery. Some things you can't spin. The *quid pro quo* is
8 right there, black and white. And Scott Jenkins lied to you
9 about it on the stand under oath.

10 So let's turn now to those more recent bribes in the
11 fall and winter of 2022. Scott Jenkins has admitted to you
12 that he took things of value from six men during that period,
13 and he's admitted that he performed an official act for each of
14 them, making them an auxiliary deputy. But he denies that
15 there's any connection between the two. He says it's just some
16 kind of big coincidence. Ladies and gentlemen, that is not
17 believable on its face. But let's talk about some reasons why
18 it's not believable.

19 Before I do, a note about the law. You've heard some
20 suggestions during this trial that Scott Jenkins never
21 expressly said to these bribe payers, I will swear you in if
22 you pay me a bribe. Under the law, he doesn't have to. The
23 public official and the bribe payer don't have to state the
24 *quid pro quo* in express terms. And that's because otherwise,
25 the law's effect could be frustrated by knowing winks and nods.

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1 So instead, what this instruction says is look at the
2 circumstantial evidence: The defendant's words, conduct, acts,
3 and all the surrounding circumstances. This instruction is
4 telling you to use your common sense, look at what happened,
5 and draw the obvious conclusions.

6 So let's make a few points about why this is not a
7 believable story. And by the way, ladies and gentlemen, don't
8 get me wrong here, the defendant has no burden of proof. The
9 entire burden of proof is on the government. We accept that
10 burden and we believe we've met it. But I'd like to talk to
11 you about why the evidence shows that this was a *quid pro quo*.

12 So first of all, Scott Jenkins and Kevin Rychlik have
13 a long-standing corrupt relationship. They talk about it in
14 the text messages. Here is one from January 1st, 2020. This
15 was the first day of Scott Jenkins's new term in office, the
16 first day he could swear in auxiliaries for that term. And
17 here's what he says -- here's what Rychlik says. He reaches
18 out. He's got five or six VASARS supporters ready to go, 5K
19 each. Scott Jenkins's response? Sounds good, man, ready
20 whenever. Here's another one. Kevin Rychlik reaches out and
21 says he has two new guys. They're big money, help starting
22 right away. Scott Jenkins knows exactly what he's talking
23 about. He says, I'll get Bernie the info from you to process
24 through.

25 Now, remember, Bernie is Bernie Feaganes. At that

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1 time, he was the one processing the paperwork for auxiliaries.
2 Scott Jenkins knows exactly what Kevin Rychlik is talking
3 about.

4 Kevin Rychlik goes further. I told them 5K each a
5 year support with 5K each coming in, and lots more on
6 re-election years.

7 One more. Here's Kevin Rychlik again. Mike Duggin,
8 he was good for a couple of good money hits. Willing to do
9 same if you want to get him re-sworn.

10 Scott Jenkins's response? Sure.

11 He agreed to the *quid pro quo*.

12 So by 2022, there is no need for these individuals to
13 state the *quid pro quo* in express terms, because Kevin Rychlik
14 and Scott Jenkins, they already know the deal.

15 Now, a word about Kevin Rychlik, because you've heard
16 suggestions throughout this trial that this was all Kevin
17 Rychlik, that Scott Jenkins didn't know what was going on.
18 Well, Kevin Rychlik told you that he was acting with Scott
19 Jenkins's full knowledge and approval. And that's backed up by
20 those tapes. You heard them over and over and over again.
21 Kevin Rychlik updating Scott Jenkins on his progress, telling
22 him how many guys we've got lined up, telling him how much
23 that's worth. Scott Jenkins knew exactly what Kevin Rychlik
24 was doing. And under the law, if you order or direct someone
25 to do something, or you authorize or consent to it, then you're

Closing Argument by Ms. Choy

1 responsible for that conduct.

2 So now let's turn to Scott Jenkins's own words during
3 that fall of 2022 period, because he acknowledged the existence
4 of a *quid pro quo* relationship.

5 (Audio playing.)

6 MS. CHOY: Jim Metcalf ready to plop down 5K, and in
7 exchange, put your boot behind Pete. Pete was the one
8 processing the auxiliary paperwork. Scott Jenkins knows
9 exactly what's going on here.

10 Here's another one.

11 (Audio playing.)

12 MS. CHOY: \$10,000 guys and you'll never hear from
13 them.

14 Here's another one.

15 (Audio playing.)

16 MS. CHOY: Scott Jenkins knows what his part is. He
17 knows it's a *quid pro quo*. You heard it in his own words.
18 Let's talk about another reason you know this story isn't true.
19 The auxiliary program, it was a sham. Now, the sheriff's
20 office had a general order governing the auxiliary program, and
21 Scott Jenkins -- he tried to tell you he's never seen that
22 order. But ask yourself -- he also told you that he was trying
23 to stand up this big auxiliary program. He was trying to
24 expand it. It was going to involve search and rescue. It was
25 going to involve lots more auxiliaries. Ask yourself: If

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1 you're the head of the office and you're standing up a new
2 program, wouldn't you want to know if your office has policies
3 in place governing that program? But in any event, it doesn't
4 matter, because this general order, it shows you what an
5 auxiliary program is supposed to look like, a real auxiliary
6 program. It involves a proper hiring process. It involves
7 proper training. It involves real service requirements. But
8 this program that Scott Jenkins was running had none of that.

9 Here is Pete Siebel's testimony. Other than that
10 criminal history check, there was no vetting. Here he is
11 again. None of these guys ever came back to receive any
12 training or to do any volunteer work. And that's what those
13 bribe payers themselves told you. They told you there was no
14 expectation of training, no real vetting, and no expectation of
15 any actual service.

16 Now, you heard a few times from Scott Jenkins that he
17 had authority to appoint whoever he wants. And that may be
18 true, but if you were trying to set up a real auxiliary
19 program, is this how you would do it? Of course not. There
20 was no auxiliary program. This is just spin.

21 Now I'd like to talk to you about these bribe
22 payments, because you heard some suggestions that these were
23 just genuine legitimate campaign contributions. Let's take a
24 look at that. With the exception of the two checks, none of
25 this money went into the campaign account, and none of it was

Closing Argument by Ms. Choy

1 reported as a campaign contribution. Now, as I mentioned,
2 under the law, campaign contributions can be bribes. You just
3 have to find an explicit *quid pro quo*. So that's not the
4 question here. The question is: Are these legitimate campaign
5 contributions? If they're not, then there's no legitimate
6 explanation for why Scott Jenkins is getting these payments.

7 So all that cash that wasn't deposited, we can't
8 trace all of it. Remember David Jones's testimony, cash is
9 hard to trace. Checks leave a paper trail. Cash doesn't. But
10 we've been able to trace a little bit of it. So remember Scott
11 Medearis's testimony. After that July 31st meeting where Rick
12 Rahim gives that first \$15,000 cash bribe, that's when we start
13 seeing the large cash deposits into Scott Jenkins's account.
14 And how about those more recent transactions? December 29th,
15 2022, Phil Howell hands Scott Jenkins a white envelope with
16 \$5,000 in cash in \$100 bills. Two days later, Scott Jenkins
17 goes to the Dulles Gun Expo. He purchases a firearm with cash
18 that he takes out of a white envelope. And we've seen that
19 cash, \$100 bills, crisp, \$3,000. So from that \$5,000, he spent
20 \$3,000, and there's \$2,000 cash remaining.

21 Now, there are some suggestions that perhaps that
22 money came from Scott Jenkins's personal safe, that he went in,
23 and he grabbed some money, and he wasn't sure which it was.
24 But why would he have many envelopes full of cash sitting in
25 his personal safe?

Closing Argument by Ms. Choy

1 A few days later, January 4th, 2023, Rubar Sandi
2 gives Scott Jenkins another \$5,000 in cash. Where does that
3 go? About an hour after Rubar Sandi leaves, there is a \$7,000
4 deposit into Scott Jenkins's personal bank account, \$5,000 from
5 Rubar Sandi, plus the \$2,000 left over from Phil Howell.

6 The last way you know this is a *quid pro quo* is that
7 Scott Jenkins tried to cover it up. He knew he was doing
8 something wrong. Now, remember, he's a trained law enforcement
9 officer. He knows how crime is detected. He knows the tools
10 that law enforcement officers have to track down criminal
11 activity. And he's careful. He tried to cover his tracks, but
12 he didn't cover them all.

13 So we know that Scott Jenkins didn't want his
14 lieutenant communicating about this scheme via text.

15 (Audio playing.)

16 MS. CHOY: Why not? Because texts leave a record.
17 And we know that he didn't want information about this scheme
18 getting out even within his own office.

19 (Audio playing.)

20 MS. CHOY: If this was all legitimate, if this was
21 all above board, why the secrecy?

22 He tried to cover it up in other ways, too. He
23 encouraged the bribe payers to pay in cash, and said that he
24 could funnel that money through other people and report it
25 under other names. Here's what he said.

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1 (Audio playing.)

2 MS. CHOY: And this wasn't a one-time thing. He said
3 this over and over again. Here's another one.

4 (Audio playing.)

5 MS. CHOY: Scott Jenkins tried to explain this when
6 he took the stand. And you observed him. You saw his
7 demeanor. You heard his answers. The man cannot give a
8 straight answer to a simple question. The truth is, these
9 rules are simple. Contributions over \$100 have to be reported
10 and they have to be reported under the name of the real source
11 of the funds. And Scott Jenkins admitted that he knows the
12 reason behind those rules. It's because of transparency and so
13 that the people can trust in the election system. It's to
14 prevent corruption. Scott Jenkins knows that, but he tried to
15 circumvent those rules.

16 And he tried to conceal these bribes in another way
17 too. He suggested breaking up the bribe amounts. Here's what
18 he said.

19 (Audio playing.)

20 MS. CHOY: Now, when Scott Jenkins took the stand, he
21 tried to explain this by saying it's better politically if
22 there's a larger number of contributions spread out over a time
23 period. That's not what he's talking about here. He's saying
24 it's better if it doesn't all look the same, because he knows
25 that if it's the same number over and over again, it looks

Closing Argument by Ms. Choy

1 like -- it doesn't look like real campaign contributions. It
2 looks like bribes, because that's what it was.

3 You also heard Scott Jenkins talking about
4 recharacterizing payments as transactions, falsifying
5 transactions. The first one was about a tractor. Let's hear
6 what he said.

7 (Audio playing.)

8 MS. CHOY: So he's trying to pretend the money he got
9 from Rick Rahim was for the purchase of a tractor. And by the
10 way, that's a different story than you heard yesterday about
11 what the money was for. But he's telling you why he wants to
12 falsify that transaction, so it comes to him clean, so he can't
13 get tagged or touched.

14 And he did that again, ladies and gentlemen. After
15 he got those cash bribes in the fall of 2022, he tried to go
16 back and pretend that those were purchases of guns. Here's
17 what he said.

18 (Audio playing.)

19 MS. CHOY: Scott Jenkins admitted that none of these
20 bribe payers had ever discussed purchasing a gun from him. And
21 what he testified was that he was just converting that money
22 from a donation into a purchase. It doesn't work that way.
23 You can't go back and rewrite history and make a bribe into a
24 transaction.

25 These are the four guns that Scott Jenkins tried to

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1 pass off as legitimate transactions. Ladies and gentlemen,
2 Scott Jenkins told you he knows what this looks like. Well,
3 it's not that complicated. It is what it looks like. It's a
4 bribery scheme.

5 So now I'd like to talk to you about the charges in
6 this case. And I'm going to skip conspiracy and circle back to
7 that. Start with honest services fraud. What is honest
8 services fraud? Well, it's the idea that public officials by
9 virtue of their office have a duty of honesty, integrity, and
10 loyalty to the public. They're supposed to act in the public
11 interest, not for their own enrichment. And when they engage
12 in a bribery scheme, that defrauds the public. It cheats the
13 public of what the public is entitled to, their honest
14 services.

15 So the first element of honest services fraud is a
16 scheme to defraud through bribery. And we know that Scott
17 Jenkins owes the public a duty of honest services. He took an
18 oath. And bribery, as I've told you before, is defined as a
19 *quid pro quo*, a thing of value in exchange for an official act.
20 The *quid* is clear: Money and campaign contributions. And
21 Judge Ballou defined official act for you. The official act
22 here is clear too: Deputizing someone as an auxiliary. That's
23 a specific, clear, concrete exercise of official power.

24 Official act also includes a public official exerting
25 pressure on another official to perform an official act, or

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1 giving advice to another official, intending that that official
2 then take an official act. So when Scott Jenkins called Travis
3 Owens and advised him that Rick Rahim was living at his
4 brother's farmhouse in order to get him to sign off on the
5 petition, that was an official act. So you can check that box.

6 The second element of honest services fraud is
7 misrepresentation or concealment of material facts. And we
8 just talked about this a lot. There was a lot of
9 misrepresentation and concealment in this scheme. You can
10 check that box.

11 The third element is intent to defraud. And that
12 means acting with specific intent to deceive for the purpose of
13 depriving the public and the government of the right to honest
14 services. And you can deceive by concealing the things of
15 value that you're receiving, or by pretending to act like an
16 honest, upright official while secretly taking bribes. And
17 both of those are exactly what Scott Jenkins did here. You can
18 check that box.

19 So the first three elements are the same for Counts
20 Two, Three, Four, and Five. But the fourth element is a little
21 bit different for each of those counts, because honest services
22 fraud involves use of either the mail or interstate wires to
23 further that scheme to defraud.

24 Count Two charges mail fraud. So we have to prove
25 that the defendant used the mails or caused the mails to be

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1 used. And remember the instructions on the law that we don't
2 have to prove that the defendant himself mailed anything or
3 even that he intended the mails to be used. It just has to be
4 foreseeable that that would be a result of the scheme. So the
5 mailing here is Rick Rahim's petition -- the granting of Rick
6 Rahim's petition, which was mailed from the Culpeper County
7 Circuit Court to the Virginia State Police. And this was
8 certainly foreseeable. Remember, Jennifer Weakley testified
9 that mailing of these documents is done in the ordinary course
10 of business. So you can check that box for Count Two.

11 Counts Three, Four, and Five require use of an
12 interstate wire. So this is the interstate wire that's charged
13 in Count Three: A text message on July 7th, 2020. So remember
14 the testimony of Dawn Miesle, the Apple employee. He explained
15 that when someone sends a text message from their iPhone it
16 first has to query a data center that's located outside of
17 Virginia to find out whether the recipient can also receive
18 iMessages. And he said that that has to happen so long as the
19 sender and the recipient, their phones haven't communicated in
20 the past eight hours. So then remember Scott Medearis's
21 testimony. He told you that he can tell that this message was
22 sent from Virginia because of the context. I'm headed over to
23 catch Paul. It was sent from Culpeper. And he told you that
24 Scott Jenkins has an iPhone. And he told you that he reviewed
25 the text messages and there was no communication between Scott

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1 Jenkins's phone and Rick Rahim's phone in the past eight hours.
2 That means that this message necessarily required Scott
3 Jenkins's phone to talk to that data center outside of
4 Virginia. That's an interstate wire.

5 Same thing for Count Four. This text message was
6 sent on January 4th, 2023. Scott Jenkins sends a message to
7 Kevin Rychlik to confirm the meeting with Rubar Sandi. And we
8 went through the same analysis with this. There was no
9 communication within the past eight hours between those two
10 phones.

11 Count Five charges the deposit of Jim Metcalf's bribe
12 check into Scott Jenkins For Sheriff's Blue Ridge Bank account.
13 Remember the testimony of Jaime Travis, the Blue Ridge Bank
14 employee. She told you that she can tell from this document
15 that the check was deposited in Culpeper. And she told you
16 that in order to complete that transaction, the check image
17 would be -- the check would be scanned, and the image would be
18 uploaded to the Jack Henry server. We have a stipulation that
19 Jack Henry does not have any servers in the Commonwealth of
20 Virginia. So you know that that check deposit required use of
21 an interstate wire. You can check that box for all of those
22 counts. So that's honest services fraud.

23 The next seven counts charge federal programs
24 bribery, or bribery concerning programs receiving federal
25 funds. The first element is that the defendant was an agent of

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1 an organization that received benefits exceeding \$10,000 under
2 a federal program. There is a stipulation that says that
3 Culpeper County and Culpeper County sheriff's office both meet
4 that requirement. And we know that Scott Jenkins was an agent
5 certainly of the Culpeper County sheriff's office. He was
6 authorized to act on the sheriff's office's behalf. You heard
7 that over and over again. There is no question about that. So
8 you can check that box.

9 Second element, the defendant accepted anything of
10 value. This is your *quid*, ladies and gentlemen, the things of
11 value. There is no dispute about that. Scott Jenkins accepted
12 those things of value. You can check that box.

13 The third element is that the defendant intended to
14 be influenced or rewarded in connection with some business or
15 transaction of that organization of which he is an agent, and
16 that the business or transaction had a value of \$5,000 or more.
17 So this is your *quo*. This is the badges. And that's a
18 business or transaction of the Culpeper County sheriff's
19 office. It's a matter within that office's jurisdiction. And
20 how do you tell that those badges had a value of \$5,000 or
21 more? Well, you can look to the value of the bribes. So think
22 about it this way: When you sell your house, how do you tell
23 how much it's worth? You look at what other people in the
24 market are paying for similar houses. You can apply the same
25 reasoning here. If people are willing to pay \$5,000, \$10,000,

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1 \$20,000 for a badge, you can infer that that badge is worth at
2 least \$5,000. You can check that box.

3 And the last element is the defendant acted
4 corruptly. Corruptly in this context just means *quid pro quo*.
5 We talked about this. There was a *quid pro quo*. You can check
6 that box.

7 And the last count is conspiracy. Conspiracy is an
8 agreement to commit a crime. And the crimes charged here are
9 the ones we've just been talking about: Honest services mail
10 and wire fraud, and federal programs bribery. So the first
11 element is that that conspiracy existed, an agreement between
12 at least one other person to commit those offenses. There was
13 an agreement here, folks. The conspirators in this case
14 included three men who pled guilty: Fred Gumbinner, Rick
15 Rahim, and Jim Metcalf. And they also include the other men
16 who told you that they paid bribes to Scott Jenkins: Tom
17 Cooper, Phil Howell. You can check that box. There was an
18 unlawful agreement.

19 The second element is the defendant knew the purposes
20 of the agreement. We've talked about this too. Scott Jenkins
21 knew exactly what was going on.

22 The third element is that the defendant deliberately
23 joined the conspiracy. Scott Jenkins joined this conspiracy
24 knowing exactly what it was. You can check that box.

25 And the final element is an overt act. That's any

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1 act performed in furtherance of the conspiracy. So that's
2 every single act we've been talking about: The meetings, the
3 calls, the bribes, the badges. Each of those is an overt act
4 in furtherance of the conspiracy. You can check that box.

5 To sum up, ladies and gentlemen, this case represents
6 a shocking breach of public trust. Scott Jenkins swore an
7 oath, a promise to support the Constitution of the United
8 States and of Virginia, and to faithfully and impartially
9 discharge the duties incumbent upon him. Holding elected
10 office, especially as a law enforcement officer, is a solemn
11 responsibility. Scott Jenkins didn't see responsibility. He
12 saw an opportunity, an opportunity to put the powers of his
13 office up for sale, to sell that law enforcement authority to
14 people who had no business carrying a badge.

15 Ladies and gentlemen, in this country, no one is
16 above the law. Scott Jenkins enforced the law against other
17 people, but he thought it didn't apply to him. He was wrong.
18 Hold him accountable. Find him guilty on all counts.

19 Thank you.

20 THE COURT: Thank you, Ms. Choy.

21 Mr. Andonian?

22 MR. ANDONIAN: Is it okay if I move the podium here
23 and use that?

24 THE COURT: Sure.

25 CLOSING ARGUMENT BY MR. ANDONIAN

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I couldn't take a bribe. Never did, never will. I have to be able to sleep at night. How it gets to where it needs to be has to be legal and proper and that's what we'll do. These are just some of the words that Scott Jenkins said at a time when he did not know he was being recorded, when he was supposedly talking to people, who according to the government, knew full well about this intentional bribery scheme that was going on. These are just some of the words that Scott Jenkins said that are inconsistent with the government's theory of a person who is trying to do wrong with a bunch of confederates who all know what's going on. And that's because Scott Jenkins never took bribes. Scott Jenkins wanted to sleep at night. Scott Jenkins wanted things to be lawful and proper. Scott Jenkins never engaged in a pay to play bribery scheme, as the government has alleged. He welcomed people that Kevin Rychlik, who he trusted, brought to him as candidates to be auxiliary deputies. He certainly welcomed people who were willing to contribute to his campaign, as any politician would, but he did not do that corruptly. Scott Jenkins is innocent of each and every one of the charges against him.

Ladies and gentlemen, there's a lot to talk about, and I want to talk about it with you, but before I do that, I want to talk to you about two legal principles that the judge instructed you on a moment ago, two important principles that

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1 will guide your deliberations in this case. The first is the
2 presumption of innocence, and the second is the government's
3 incredibly high standard of proof: Proof beyond a reasonable
4 doubt.

5 The presumption of innocence is exactly what it
6 sounds like. Scott Jenkins was innocent when he walked into
7 this courtroom last week. He was innocent as he sat in that
8 chair throughout this trial. And he is innocent as he sits
9 behind me right now as I'm talking to you. And what that
10 means, ladies and gentlemen, is that when you look at the
11 evidence, when you listen to the recordings, when you look at
12 the videos, when you look at the text messages, when you
13 understand that things can be interpreted one way, they can be
14 taken another way, you resolve those questions, you resolve
15 those doubts in favor of Mr. Jenkins, not the government,
16 because Mr. Jenkins is presumed to be innocent.

17 The next legal principle is proof beyond a reasonable
18 doubt, the legal standard the government has to meet as to each
19 element of each offense with which they have charged
20 Mr. Jenkins. Ladies and gentlemen, it's no over-statement to
21 say that proof beyond a reasonable doubt is the highest level
22 of proof in our legal system. It is the highest level of proof
23 in our legal system. It means that if any one of you has a
24 reason to doubt that the government has not met its burden, you
25 must find Scott Jenkins not guilty. But to put this in

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1 practical terms, people, businesses can go to court fighting
2 over millions, billions, trillions of dollars, and those
3 disputes would be resolved on legal standards less than proof
4 beyond a reasonable doubt. Family members could fight over end
5 of life care for family members and loved ones, and those
6 disputes, if they went to court, would be decided on standards
7 less than proof beyond a reasonable doubt. If the government
8 wanted to take someone's property or take someone's children
9 from them, those legal disputes, too, would be decided on
10 standards less than proof beyond a reasonable doubt.

11 So ladies and gentlemen, as you sit here, if you
12 think, I think Scott Jenkins probably did what the government
13 said he did, you must find him not guilty. If as you're
14 sitting here you think, I think it's highly likely that Scott
15 Jenkins did what the government said he did, you must find him
16 not guilty. If you are sitting here thinking, I think there's
17 clear and convincing evidence of Scott Jenkins's guilt based on
18 what the government showed us, ladies and gentlemen, you must
19 find him not guilty. Because all of those standards are lower
20 than proof beyond a reasonable doubt. And ladies and
21 gentlemen, we submit there are plenty of reasons to doubt that
22 the government has met every burden -- its burden as to every
23 element as to every offense with which they have charged
24 Mr. Jenkins.

25 Now, ladies and gentlemen, look, I'm not standing up

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1 here telling you that there aren't things that might have made
2 you raise an eyebrow, might have made you scratch your head,
3 that might have made you question something that you saw or
4 something that you heard. You saw a little bit of the inner
5 workings of a small town sheriff's office in all of its
6 unpolished raw glory. You saw a little bit about of the
7 workings of a small town where elected officials know each
8 other. So you heard about noncompliance with ethics reports.
9 You heard about loans that might not have been reported on
10 documents. You heard about conversations between Mr. Jenkins
11 and the Commonwealth's Attorney or the Deputy Commonwealth's
12 Attorney and the Judge of the Circuit Court of Culpeper. But
13 ladies and gentlemen, we're not here to pass judgment on
14 Mr. Jenkins and whether or not he acted completely ethically or
15 completely properly when it comes to campaign finance reports.
16 We're not here to cast judgment on Mr. Jenkins about his
17 decision to make outreaches to people that he knows in other
18 public offices. We're here to decide whether or not the
19 government has met its burden of proof as to each and every
20 element of each and every offense that they have charged him
21 with in this case. And when you look at this case, and you
22 look at the facts through the lens of innocence, the
23 presumption of innocence, you will see that there are plenty of
24 reasons to doubt.

25 So where do we start this discussion? Well, we start

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1 where everyone else did, with Kevin Rychlik, because the best
2 sources are criminals. That's what Special Agent Medearis told
3 us yesterday. And Kevin Rychlik is a criminal. He's a
4 criminal based on what he said he's done, and he's a criminal
5 because he pled guilty to a crime in another part of Virginia
6 for failing to pay taxes. And not just a little bit of taxes,
7 but a course of conduct over many years, 60-plus quarters for
8 just two of his businesses that we talked about, millions of
9 dollars of money that he didn't pay. And we'll talk more about
10 why that's important in a moment. But it starts with Kevin
11 Rychlik because Kevin Rychlik was the focus point. He was the
12 one that went out and found people to bring back to Scott
13 Jenkins for the auxiliary deputy program. And he was the one
14 that Scott Jenkins trusted because of Mr. Rychlik's business
15 connections, while he still had them, to bring back people who
16 wanted to donate to the campaign, two completely legitimate
17 objectives.

18 So on the one hand, you have Kevin Rychlik, who is
19 Scott Jenkins's lieutenant in charge of the auxiliary program,
20 a trusted confidant and adviser, who Scott Jenkins has tasked
21 with helping him build an auxiliary program, who he has tasked
22 with helping him build a campaign war chest.

23 And on the other hand, you have Kevin Rychlik, who
24 since 2021, has been working with the government. You have
25 Kevin Rychlik, who since well before 2019 was engaging in

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1 criminal conduct that he knew he was engaging in. And what's
2 important is that Kevin Rychlik, the adviser, Kevin Rychlik,
3 the person working with the government, the person committing
4 crimes, all came together as a cooperating witness when he came
5 into this courtroom and sat here and talked to you. And he
6 told you he's looking at time, as much as five years in prison
7 for the tax fraud that he pled guilty to, and he doesn't want
8 to do that time. He doesn't want to do close to that time.
9 He's got a family. He's got a house. He doesn't want to go to
10 prison. And it wasn't just the fact that he's hoping that by
11 being here and talking to you all and testifying that he will
12 please the government enough that they will help him and go to
13 bat for him at sentencing, but it's also what he didn't have to
14 deal with because of his cooperation. He wasn't looking at
15 multiple counts of tax fraud. He was looking at one. He
16 wasn't looking at multiple counts that could put him in prison.
17 He wasn't looking at multiple counts that could add up more
18 fines. He was looking at one. And all of that was because he
19 entered into an agreement with the government to cooperate.
20 And that cooperation, the determination as to whether or not
21 Kevin Rychlik gets the benefit of that deal, that ultimately
22 rests with the government. Whether they go to bat for him or
23 not is the government's sole discretion. And Kevin Rychlik
24 knows that. So when he sat here in this chair, he was doing
25 everything he could to make the government happy. That's what

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1 his motive was when he was testifying before you all.

2 So when Kevin Rychlik tells you the money guys are
3 different than the VASARS guys, when he tells you that he was
4 in the pickup truck with Mr. Jenkins and Rahim when they were
5 initially talking, even though Mr. Jenkins and Mr. Rahim both
6 said he wasn't, ask yourself why that might be. When he's the
7 one in the car with Jim Metcalf on that video clip using the
8 phrase pay to play while he's recording the entire
9 conversation, ask yourself what he might be trying to get out
10 of that. When he's the one who says, we have a VIP program
11 that he's the principle driver of, to quote Fred Gumbinner, ask
12 yourself what Kevin Rychlik might be up to when he's trying to
13 push these terms and phrases and this agenda. As Rick Rahim
14 said, Kevin Rychlik came to him with a mission, and a mission
15 he had to do whatever he could to make the government happy to
16 save his own neck.

17 Now, ladies and gentlemen, I want to be very clear
18 about what it is that happened and what you saw evidence of.
19 Scott Jenkins is a politician. He's an elected official -- or
20 was an elected official at the time. Elected officials run for
21 office and they need money to do that. That's not a surprise.
22 That's no secret. They have campaigns. They have obligations.
23 They have publicity they need to get. And Scott Jenkins was no
24 exception. Scott Jenkins was also the sheriff with an office
25 and people under him, and an agenda that he wanted to fulfill

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1 in the terms that he held. And you heard some of those agendas
2 that he had discussed. Kevin Rychlik was somebody that Scott
3 Jenkins had no reason to believe at the time was going to turn
4 around and stab him in the back. Kevin Rychlik was somebody he
5 had known for a while. Kevin Rychlik was a friend. He was a
6 trusted adviser and confidant, and he was somebody Scott
7 Jenkins looked to for help, help on both fronts: Recruiting
8 auxiliary deputies, recruiting people who could help
9 financially with the campaign. And as Mr. Jenkins told you,
10 over the time what happened was Mr. Rychlik essentially got
11 efficient in what he was doing, finding people who would be
12 good auxiliary deputies who also wanted to support Scott
13 Jenkins. And all of those things happened at one meeting at
14 one time while everybody was in the same place. That doesn't
15 make it a *quid pro quo*, because Scott Jenkins never had any
16 intent of giving a badge only on the condition that he get
17 money in return. He certainly never authorized Kevin Rychlik
18 to make that point clear to anyone. And Scott Jenkins never
19 had any intent of any of that being a bribe. Scott Jenkins was
20 looking to build an auxiliary deputy force, and he was looking
21 for people to help his campaign.

22 Despite the fact that much was made over the lack of
23 training, the lack of connection to Culpeper, the lack of
24 knowledge or lack of meeting Mr. Jenkins ahead of time, there
25 was rhyme and reason to the people that Mr. Rychlik was

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1 bringing to Scott Jenkins, putting aside the fact that
2 Mr. Rychlik was telling them something completely different
3 than what he was telling Mr. Jenkins. Rick Rahim was active
4 with the Culpeper County sheriff's office. You saw a picture
5 of him in a uniform at an event. You heard about him going on
6 ride-alongs.

7 Jim Metcalf talked about how he longed to get back on
8 a police motorcycle, and that there were a couple in Culpeper
9 that weren't being used, and wanted to create or resurrect a
10 police motorcycle program.

11 Each and every one of the other individuals told you
12 that although they hadn't been asked to do anything, if they
13 had been asked to do something, they would have come and served
14 -- in a moment, I believe Mr. Howell said. And ladies and
15 gentlemen, we're talking about people who live in another part
16 of Virginia, not the moon; an hour away, sometimes less than an
17 hour away, people who would be able to take part in activities
18 that varied, depending on what Scott Jenkins wanted or needed
19 at any given time.

20 Fred Gumbinner called Mr. Jenkins a luminary. Tom
21 Cooper liked his platform. Jim Metcalf liked what he stood
22 for. You saw text messages of Mr. Rychlik referring to the
23 Kuhns, father and son, both of whom were helicopter pilots and
24 VASARS supporters. VASARS was Mr. Rychlik's nonprofit search
25 and rescue organization. We're talking about people who have

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1 some interest. They have a connection, whether it's directly
2 to the office, whether it's because of an affinity for
3 Mr. Jenkins or his platform, or whether it's because they have
4 services that they can offer, which could include financial
5 support. We're not talking about a completely illogical set of
6 people, contrary to what the government has said. And as far
7 as the lack of training, ladies and gentlemen, look, you don't
8 have to like the fact that a sheriff as a Constitutional
9 officer in Virginia has discretion to do what he wants to do
10 with his office, you don't have to like the fact that a
11 sheriff -- the sheriff's office is held to a different standard
12 than the city police, which is what Chad McKnight, one of the
13 government's witnesses, told you. You don't have to like the
14 fact that an auxiliary officer that doesn't meet a certain
15 hours threshold on any given month doesn't have to have any
16 training at all. Again, that came from Captain McKnight, one
17 of the government's witnesses. But you have to understand that
18 that was the reality for Scott Jenkins. That was his sheriff's
19 office under his regime. And to the extent he saw value in
20 people that Mr. Rychlik, somebody he trusted -- that's how it
21 was. But at the end of the day, the point was: Scott Jenkins
22 was not conditioning the appointment of auxiliary deputies on
23 the provision of money to him. He was looking for good people
24 to be auxiliary deputies, and he was looking for people to help
25 with his campaign, his politician hat, his sheriff's hat coming

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1 together, and he was relying on Kevin Rychlik to help him
2 accomplish both of those goals, which is what Kevin Rychlik was
3 telling Mr. Jenkins he was doing.

4 Ladies and gentlemen, I'm not going to stand up here
5 and insult you and act like there aren't things that have to be
6 explained and act like there aren't things that if you don't
7 talk about them can look bad, because we certainly saw plenty
8 of that in this trial. But again, if you're looking at these
9 things through the lens of guilt, which is what the government
10 is trying to get you to wear, they're going to look bad. You
11 can make anything you want out of them that casts Scott Jenkins
12 as a villain. But when you take off those glasses and you put
13 on the glasses of innocence, the presumption of innocence that
14 protects this man at this moment, there are other explanations.
15 There are other reasons things happen. And you have to look at
16 those things through the lens of innocence. And to the extent
17 there's a question, to the extent there is doubt, those are
18 reasons to find Mr. Jenkins not guilty.

19 The gun sale, let's just talk about that right now.
20 Mr. Jenkins on a recorded conversation with Kevin Rychlik in
21 the Target parking lot. Ladies and gentlemen, that might not
22 make sense. That might sound wild and concocted. But Sheriff
23 Jenkins explained to you what was going on in his mind at that
24 time. There was a report that had been due that he was unaware
25 of, that had been filed without those cash donations being part

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1 of it. And Scott Jenkins had a moment of panic. He didn't
2 want to amend the report, because that's political weakness,
3 blood in the water I think is the term he used, because then
4 your opponents say, well, look at this guy. He can't even keep
5 his money straight, he's got to amend his campaign report.
6 This guy is a bumbling idiot, vote for me instead.

7 Did Scott Jenkins make a decision or a choice that
8 was the best that he could have made? Did he make a choice or
9 a decision that opened him up to a tremendous amount of
10 scrutiny? Perhaps. But he explained to you what he was trying
11 to do. He was trying to find a way to make the cash that
12 didn't make it onto that report legal, and not be something
13 that he kept improperly.

14 First off, before I talk about the details, if what
15 Mr. Jenkins is doing this entire time is running this illegal
16 scheme trying to get money and sell badges, what does he even
17 need to have the conversation with Kevin Rychlik in the first
18 place for? He's got a bunch of cash. Why doesn't he just go
19 home, tuck it under his mattress, and not tell anyone about it?
20 Who would find out? Who would even know? Instead, he comes to
21 Kevin Rychlik and says, I need to be able to sleep at night. I
22 need to have my conscience clear. I need to figure out a way
23 to make this right. And what he came up with -- again, you can
24 cast any kind of judgment you want on his judgment at that
25 time, but the idea that he came up with was: I'll make it a

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1 gun sale. And it's not like we're talking about some fantasy
2 that existed only in Mr. Jenkins's head. He showed up at that
3 meeting with guns. You saw them. They were here in the
4 courtroom. Real guns that Mr. Jenkins told you had real value.
5 And when he left that meeting with Mr. Rychlik, he left the
6 guns with Mr. Rychlik, along with the receipt signed by him,
7 signed by Mr. Rychlik, who was a licensed firearms dealer at
8 that time, and he went home.

9 Again, ladies and gentlemen, maybe not the decision
10 you would make, maybe not the decision somebody else would
11 make, but it was a decision he made at that time. And again,
12 if he wanted to get away with something, why on earth would he
13 go through the trouble of doing what he did instead of just
14 taking the money and running with it? And the reason is
15 because he wasn't trying to do anything wrong. He was trying
16 to do what he thought was right.

17 Helping Rick Rahim -- by the way, Rick Rahim was also
18 somebody who came in here and sat down in this chair and sung
19 the song that the government wanted, because Rick Rahim is not
20 only pleading guilty with allegations in connection with this
21 investigation, he pled guilty in two other matters in other
22 parts of Virginia for more criminal conduct. He told you he
23 doesn't want to go to prison either. He's got a family. He's
24 got nice cars. He's got nice houses. So when Rick Rahim tells
25 you, I'm not going to let you put words in my mouth, I was not

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1 a resident of Culpeper, even though he had a lease for a
2 residence in Culpeper that exists. You saw the house. You saw
3 pictures the government presented. Even though he registered
4 his cars there, even though he registered to vote there, and he
5 told Scott Jenkins all of this. Rick Rahim, trying to do what
6 is in Rick Rahim's best interests.

7 But getting back to Mr. Jenkins helping Mr. Rahim,
8 Mr. Jenkins told you they became fast friends. That happens
9 sometimes. You become fast friends with someone. And
10 Mr. Rahim was somebody with means. Mr. Jenkins with somebody
11 with ideas. And he told you about some of them: Shooting
12 ranges, the Make Virginia Great Again apparel that he had made.
13 Mr. Rahim was a businessman, an investor in particular. And
14 Mr. Jenkins told you that they got to talking and they had
15 ideas and they built a friendship around them.

16 What did Mr. Jenkins really do for Mr. Rahim? He
17 talked to a few people that he knew in county government in the
18 small town of Culpeper. And you heard from those people. You
19 heard from the Deputy Commonwealth's Attorney, Travis Owens.
20 You heard from the Circuit Court Judge, Dale Durrer. Did any
21 one of them say, oh, my God, I cannot believe Scott Jenkins
22 reached out to me. When he did that, I went running out of the
23 room covering my ears because it was so improper. Did Judge
24 Durrer say when Scott Jenkins called me or texted me I
25 practically threw my phone in the garbage because I couldn't

Closing Argument by Mr. Andonian

1 believe such a thing was happening? No. They talked about it
2 like it was commonplace occurrence, which it probably is
3 between people who know each other well in a small town. Be
4 that as it may, what did it get Rick Rahim? He had to wait
5 like 100 years before his firearms rights were finally
6 restored. He had to wait the full 45 days to get his concealed
7 carry permit, no matter how much checking in the sheriff's
8 deputies were doing. And as far as being sworn in, well, we've
9 talked about that. Rick Rahim was somebody who had acted in a
10 law enforcement capacity for the Culpeper County sheriff's
11 office. He had materials and equipment that would be valuable
12 to the office, like getting a drone package. We heard about a
13 SHERP, an amphibious vehicle. Scott Jenkins at most was making
14 inroads for a friend that really didn't have that much of an
15 impact at the end of the day.

16 Now, Rick Rahim talked about other support that he
17 provided to the office. He helped put up two big billboards
18 that we saw. He made up some fliers, some postcards, and some
19 other trinkets. And to the extent the billboards should have
20 been reported on campaign finance reporting documents,
21 Mr. Jenkins told you yesterday that should have been done, and
22 it wasn't. And maybe that's because David Myers didn't convey
23 to David Jones that those billboards had been paid for by Rick
24 Rahim, or maybe it was something else. Again, the point is, it
25 doesn't matter. Mr. Jenkins isn't on trial for not reporting

Closing Argument by Mr. Andonian

1 something that he should have in a campaign finance disclosure
2 document.

3 The same thing goes for Fred Gumbinner. Fred
4 Gumbinner took forever for him to actually become an auxiliary
5 deputy, despite the fact that according to the government and
6 according to Rick Rahim, who is sitting here telling you
7 anything the government wants to hear, that Mr. Gumbinner paid
8 Mr. Jenkins money, Mr. Jenkins can just snap his fingers and
9 make things happen. It took a while. And while we're on the
10 topic of Mr. Gumbinner, remember the paper trail with that.
11 Nobody said that Mr. Gumbinner walked up to Mr. Jenkins and
12 handed him \$20,000. You saw the check for Mr. Gumbinner's
13 account that he wrote to Mr. Rahim as an LLC investment. Now,
14 Mr. Rahim and Mr. Gumbinner -- Mr. Gumbinner also being
15 somebody who has an agreement to cooperate with the
16 government -- they told you, oh, no, that was really just a
17 pass-through so it could go to Sheriff Jenkins. But again, you
18 have to take the source with a grain of salt when you're
19 talking about people with self-interest, talking about people
20 who want to get the government's help when it's all said and
21 done.

22 Mr. Jenkins did some outreach. He did some
23 connecting. He prodded some people. But in the end, it didn't
24 really make much of a difference.

25 Another thing I want to address is the cash that Rick

Closing Argument by Mr. Andonian

1 Rahim gave to Sheriff Jenkins. Again, ladies and gentlemen, if
2 Sheriff Jenkins is doing something wrong and he's trying to get
3 away with it, why would he not just come up and say, I don't
4 know what you're talking about, I've never seen any cash from
5 Rick Rahim. Rick Rahim never gave me a dime. Cash is not
6 traceable, as we heard from Mr. Jones. Why wouldn't he just
7 say anything other than what he did say, which is yeah, I got
8 cash from Rick Rahim. Why would he put himself in that
9 position if it wasn't true? And he told you why he got the
10 cash from Rick Rahim, because Rick Rahim is a businessman, an
11 investor. Mr. Jenkins had ideas, and they partnered up
12 together to try to implement them. There's nothing wrong with
13 that, because that wasn't contingent on anything. That was
14 Mr. Rahim voluntarily helping somebody he had become fast
15 friends with.

16 I want to talk a little bit about the general order
17 that we've heard a lot about at this point in time, and really
18 the sheriff's office and authority more broadly. Sheriff
19 Jenkins testified and told you that as the sheriff, he was at
20 the top of the food chain. He was the one running the office,
21 and that's true. We're not running from that. And in that
22 capacity, he had the discretion to appoint people to be
23 auxiliary deputies as he saw fit. But one thing that he did as
24 sheriff, as most managers do, was delegate. Now, the
25 government is trying to spin that into feasible deniability or

Closing Argument by Mr. Andonian

1 plausible deniability. But in the management world, it's got
2 its own term and it's called delegation. And he had people
3 under him that would do different things. One of those duties
4 was writing general orders as part of the accreditation program
5 -- or the programs that the Culpeper County sheriff's office
6 was part of. One of those things was to be in charge of
7 policies relating to accreditation. And one of those policies
8 happened to be that general order, which, by the way, isn't
9 signed by Mr. Jenkins. It says issued on the authority of, and
10 then it's typed out. So that doesn't really tell you anything
11 about who saw what. But more to the point, it didn't matter.
12 Sheriff Jenkins sat up here and told you, if he had seen that
13 and if he had read it, he would have required it to be
14 rewritten, because he would not have had some policy in his
15 office limiting his ability to appoint auxiliary deputies as he
16 chose.

17 Another thing that we heard about that I want to
18 tackle head on is this idea of money in the form that it takes
19 and the way that it got to him. We saw the clips. We heard
20 the clips. We read text messages. Mr. Jenkins is making
21 suggestions that money can go through his brothers or other
22 people. He's talking about splitting money up into different
23 amounts. Again, if you put on the government's guilty glasses,
24 and you look at that information through that perspective, you
25 could certainly tell a bad tale of wrongdoing. But if you go

Closing Argument by Mr. Andonian

1 back and you put on the lens or the glasses of innocence,
2 there's an explanation, and you got it from Mr. Jenkins.
3 Again, he's wearing a sheriff's hat, but he's also wearing a
4 politician's hat. And there's political reasons, right or
5 wrong, good or bad, ill-advised or not, there are political
6 reasons that Mr. Jenkins was saying the things he was saying.
7 Yes, there are reporting requirements that need to be followed
8 in a perfect world. Yes, payments should be exactly what they
9 are however anybody wants them to come in. But in the
10 political reality that Mr. Jenkins was living in, sometimes
11 people don't want their names associated with a donation to a
12 particular campaign; in particular, somebody like Mr. Jenkins
13 who happened to be a lightening rod on a number of big issues.
14 And in the political world, somebody putting a large amount of
15 donation down at one time, a couple of things happen: One,
16 they spent all their money at once, and you get one reporting
17 period to kind of flex and show that you've got the support of
18 that donor; and two, they put a big old target on their back
19 because now everybody knows that they might have deep pockets
20 and other politicians come along and try to poach them. So
21 Mr. Jenkins suggested at various times to address these
22 problems that people who didn't want to be associated with him
23 or his campaign could potentially give money to his brothers,
24 who could then donate. Again, we're not here to talk about
25 whether or not that's a violation of some campaign finance

Closing Argument by Mr. Andonian

1 reporting rule or not, but that was the explanation that he
2 gave, not because he's trying to hide a bribe. And with
3 respect to splitting up payments, including in different
4 amounts, not just splitting them up in different periods,
5 you're talking about protecting somebody from poaching, and
6 you're talking about stretching out the value of their donation
7 over multiple reporting periods so you can appear to have more
8 donors and more financial support over a longer period of time.
9 Again, might not be the best way to do things if you're looking
10 at this as a campaign finance reform or finance disclosure
11 hypothetical, but that isn't why we're here.

12 Scott Jenkins told you why he was making those
13 suggestions. And again, he's doing this at a time where he
14 doesn't know he's being recorded. He doesn't know Kevin
15 Rychlik has already thrown his hat in with the government and
16 is trying to save his own neck. Might he have chosen better
17 words? Might he have explained things a little bit more if he
18 had? Probably. But he didn't. But that's the explanation
19 that he gave you, and it's a credible explanation. And it's a
20 reason to doubt.

21 By the same token, we've heard a lot of testimony
22 about Mr. Jenkins's habits when it came to communicating. He
23 didn't like to have his cell phone around him. He didn't like
24 to be on text all that much, although he was. Mr. Jenkins
25 explained to you the reason for that. First, he had been the

Closing Argument by Mr. Andonian

1 victim of a political attack by disgruntled deputies who took a
2 recording of him and used it against him on a public platform.
3 He talked about how he just doesn't trust listening devices,
4 because in his experience as a cop, he knows that you can turn
5 them into recording devices. Ladies and gentlemen, is it a
6 little bit much? Is that kind of paranoia warranted? It
7 doesn't matter. That's what was going through Scott Jenkins's
8 mind and that's why he was acting, but it wasn't because he was
9 trying to conceal anything or hide anything. It wasn't because
10 he was trying to stay off the radar for illegal activity. It's
11 because he was trying to protect himself politically. And that
12 is the same reason that Scott Jenkins talked about on multiple
13 occasions, a small circle of trusted people. Is it that hard
14 to imagine a small-town sheriff and an elected politician
15 having a small group of people that he trusts with various
16 things? That's what he's saying. Again, put on the guilty
17 glasses, and you can spin that a number of different ways that
18 look really bad for Scott Jenkins. But if you look at it
19 through the presumption of innocence, there is an explanation
20 that makes sense, and it's yet another reason to doubt the
21 government's case.

22 And finally the gun purchase using cash. Mr. Jenkins
23 told you that he had lots of cash on hand. And he had lots of
24 guns. Again, you don't have to like guns. You don't have to
25 be somebody that has lots of cash on hand. But you have to

Closing Argument by Mr. Andonian

1 understand that's where he was coming from. And the government
2 makes a huge deal about the fact that he went and he purchased
3 the gun using cash that looked like cash that he might have
4 gotten from one person or another. Again, ladies and
5 gentlemen, this is Scott Jenkins acting openly. This is Scott
6 Jenkins acting without shame, without trying to cover anything
7 up. If he was trying to do something wrong, wouldn't he not go
8 out and put cash that shouldn't be out there, out there?
9 Wouldn't he just go and shove everything, again, under his
10 mattress and just keep his mouth shut? There isn't a there,
11 there. It's more of the government trying to get you to look
12 at every last little thing Mr. Jenkins said or did through the
13 perspective of guilt and not the perspective of innocence.

14 Mr. Jenkins's own words -- his own words are what I
15 want to leave you with. I have never taken a bribe, never
16 have, never will; is what he said to undercover Mike. I need
17 to be able to sleep at night, is what he said to Kevin Rychlik.
18 All the things that we need to do have to be lawful and proper,
19 and that's what we'll do, is what he said to undercover Jerry
20 McKee. These are the words of somebody who had absolutely no
21 reason to be saying those things, because he had absolutely no
22 idea he was being surveilled and recorded and checked up on.
23 These were the words of somebody who was telling you in real
24 time what his actual subjective intent was in those moments and
25 others.

Closing Argument by Mr. Andonian

1 Ladies and gentlemen, I'm about done and I'm going to
2 sit down in a moment. And that's the last you're going to hear
3 from me. The government has an opportunity to get back up and
4 talk to you one more time. But I want you to know that the
5 government doesn't get the last word in this courtroom. You
6 do. Because you are ultimately the ones that decide whether or
7 not the government met its burden of proof beyond a reasonable
8 doubt, that high, high, highest burden that we have in this
9 country. And so after the government talks to you again, as
10 you go back and deliberate, ask yourself whether or not,
11 looking at things through the presumption of innocence, the
12 government has met its burden as to each and every element of
13 each and every offense with which they've charged Mr. Jenkins.

14 And I would submit, ladies and gentlemen, if you do
15 that, and you faithfully apply the burden of proof to the
16 government, you will see that there are plenty of reasons to
17 doubt, plenty of reasons to find Mr. Jenkins not guilty on each
18 and every charge.

19 Thank you.

20 THE COURT: Thank you, Mr. Andonian.

21 Ladies and gentlemen, as Mr. Andonian indicated, the
22 government is going to have an opportunity for rebuttal, and
23 then I've got some final instructions. We've been going about
24 two hours. I want you to be comfortable for this last piece.
25 And so I'm going to take a quick ten-minute break, let everyone

Closing Argument by Mr. Andonian

1 have a little comfort break. Then we'll come back and get this
2 last bit done.

3 We'll stand in recess for ten minutes.

4 (*Jury out, 3:44 p.m.*)

5 THE COURT: All right. Let's try to come back
6 around -- between ten and five till 4. We'll stand in recess
7 until then.

8 (Recess.)

9 THE COURT: We're back on the record in the case of
10 *United States v. Jenkins*. The government is present by its
11 counsel. The defendant likewise is present along with the
12 benefit of counsel.

13 Ladies and gentlemen, just so that you will know, in
14 my final instructions, the last little piece gets me to
15 alternates. And so I will not let the alternates go back in
16 the back. We'll probably have to end up getting their stuff
17 out of the jury room. But the two people that I have on my
18 list as alternates, alternate 2, who is now the first
19 alternate, is Ms. Patrizia, and the second alternate, who was
20 alternate 3, is Ms. Dowdy, if you all were keeping score.

21 So as I dismiss the jury, I'll ask them to stay back.
22 And I do ask them to abide by all the same rules that the jury
23 has to abide by, and that is not talk to anybody until they
24 know there's a verdict. Once there's a verdict, if they're not
25 needed, we reach out to them and let them know that there has

Closing Argument by Mr. Andonian

1 been a verdict. But we don't make them stay here. They can go
2 home. And it looks like both of them are local, in any event.

3 All right. Otherwise, are we ready for the jury?

4 Who's got the rebuttal? How long are you going to
5 be, Ms. Peng?

6 MS. PENG: 20, 30 minutes.

7 THE COURT: They're ready to go. So brevity is --

8 MS. PENG: Yes, Your Honor.

9 THE COURT: All right. Are we ready for the jury,
10 counsel?

11 MS. CHOY: Yes, Your Honor.

12 THE COURT: Let's bring the jury in.

13 (*Jury in, 4:02 p.m.*)

14 THE COURT: Ladies and gentlemen, you all please have
15 a seat. What a difference a week makes. We've gone from
16 puffer jackets to short sleeves. I don't think we're going to
17 be that much longer, but we're trying to bring the temperature
18 down just a little bit.

19 What we have left is the government has an
20 opportunity for rebuttal. Then I have some instructions for
21 you, and then the case will be yours to begin your
22 deliberations. So if I can kindly ask you to turn your
23 attention to Ms. Peng, I believe, who is going to give the
24 government's rebuttal.

25 Ms. Peng?

Rebuttal Argument by Ms. Peng

1 REBUTTAL ARGUMENT BY MS. PENG.

2 Hello, everyone. So the good news is I'm going to be
3 the last attorney you hear from today. And so I'm going to try
4 to keep my remarks short, because my job is basically to
5 respond to just a couple of arguments that you heard from the
6 defense just now. I know you've all been listening very
7 carefully throughout the trial. So I'm not going to walk
8 through all of the evidence like my colleague, Ms. Choy did,
9 because I know you've been paying attention, so I'm not going
10 to try to repeat anything that you already know.

11 But you know, where I want to start is where I
12 started when I talked to you at the very beginning of this
13 trial, which is you were selected as jurors for your common
14 sense and reason. And the system depends on you, average
15 citizens, to determine what the truth is. That's the point of
16 trial. And so you heard defense counsel just now tell you that
17 you ought to put on glasses of innocence. You just heard the
18 judge give you detailed instructions that the arguments of the
19 attorney is not the law. The law you follow are the jury
20 instructions that the judge read to you. I do want to share
21 with you some jury instructions and show them to you and
22 explain to you some of the law that we're going to be looking
23 at.

24 So first of all, the law tells you what I just told
25 you, which is you are to use your common sense when evaluating

Rebuttal Argument by Ms. Peng

1 the disputes and the facts in this case. That is the whole
2 point of you as jurors. You're expected to use your good
3 sense. So I submit to you under the jury instructions you're
4 not putting on glasses of innocence. That's not a thing. But
5 you can put on glasses of common sense, if you will, to look at
6 the facts that have been presented to you. Now -- and I submit
7 to you, if you use your common sense, focus on the evidence,
8 not on the spin, it's a pretty simple case. We've told you
9 from the very beginning, the facts are simple. Scott Jenkins
10 sold badges for money. If you find that fact to be true, then
11 I submit to you your job back there is going to be pretty
12 straightforward.

13 Okay. So let's get to some of the arguments that you
14 just heard from the defense. You've heard throughout the case
15 that the government's witnesses are liars because they're
16 expecting a benefit. Specifically, Kevin Rychlik, he's the one
17 that did all of this and you shouldn't believe him. I talked
18 to you about this at the beginning of the trial too. And you
19 have instructions on this. Yes, the instructions tell you that
20 you ought to examine the credibility of a witness such as Kevin
21 Rychlik more carefully than other witnesses because he has an
22 interest in the case. He can receive a benefit if he
23 cooperates with the government. We don't run away from that.
24 That's all true. But what else does the jury instruction tell
25 you about evaluating the credibility of witnesses? It asks you

Rebuttal Argument by Ms. Peng

1 to look at all of the evidence presented. It asks you to look
2 at the corroboration, the text messages, the recordings, the
3 corroborating testimony of multiple witnesses that all align
4 with each other, except for one, and that's Mr. Jenkins. And
5 all of you know, using your common sense, simply because a
6 witness is -- has taken responsibility and is cooperating with
7 the government doesn't make them a liar. If their testimony
8 aligns with the facts that you've seen, you're allowed to
9 believe them. And I submit to you with respect to Kevin
10 Rychlik and Rick Rahim, all of their evidence has been
11 corroborated by text messages, recordings, other witness
12 testimony, things that Mr. Jenkins cannot spin, things that are
13 written down in black and white. And by the way, here's how
14 you know it's true: Because the only fact they had to quibble
15 with with respect Mr. Rychlik is that somehow Rahim handed
16 him -- Scott Jenkins the money inside of a truck as opposed to
17 outside of a truck. Okay. Scott Jenkins already admitted that
18 Rick Rahim gave him \$45,000 in cash. Does it matter whether
19 Mr. Rychlik was inside the truck? No, it doesn't. And the
20 same thing with Mr. Rahim. You heard his testimony and now
21 they've told you that, you know, he's also not telling you the
22 truth. The same instructions apply to Mr. Rahim. You saw
23 those text messages in black and white of Mr. Rahim agreed to
24 do with Mr. Jenkins. You heard Mr. Jenkins in his own words in
25 that recording reiterating the original deal that he

Rebuttal Argument by Ms. Peng

1 understood, the money for the three things that he promised:
2 Firearms restoration, the concealed carry permit, and then
3 finally the badge, three things that he delivered on just like
4 he told Rahim he would do. And then you also heard the
5 suggestion, well, if he had something to hide, why didn't he
6 just pocket the cash from Rahim and not tell anyone? Why did
7 he say he accepted the cash from Rahim? Here's why: You know
8 why. You know Scott Jenkins is an experienced law enforcement
9 officer. He tells you he leaves himself two to three avenues
10 out. And you saw the financial records, again, in black and
11 white, showing the money flowing into his account in large
12 amounts of unexplained cash. He can't deny the bank records.
13 That's why he has to admit that he got some money from Rahim,
14 right? But what did he tell you the money was for? A business
15 deal. You heard that. He told you that. He made up that lie
16 in contrary -- in contrast to the words that he recorded -- he
17 was recorded on -- and this part I agree with counsel -- when
18 he didn't know he was being recorded, that's when he told the
19 truth. And you heard the truth out of Mr. Jenkins's mouth over
20 and over again.

21 And beyond that, it's not just Mr. Rychlik or
22 Mr. Rahim who you heard testify before you. The government
23 presented with you multiple witnesses who told you the same
24 thing. They told you they took bribes. These are businessmen,
25 maybe not so sophisticated, but they told you they had an

Rebuttal Argument by Ms. Peng

1 expectation that they were paying the money and they expected a
2 bribe.

3 Use your common sense, ladies and gentlemen, about
4 what is happening here. I want you to imagine -- let's say you
5 showed up to a job interview, and you came with \$500 of cash,
6 right, and you handed it to the interviewer because the
7 interviewer's second in command had told you if you give over
8 that cash, you're going to get the job. I assume none of you
9 have done that because that's not what you do in order to get a
10 job. But if the interviewer then takes that cash, doesn't say
11 anything, doesn't open it, doesn't count it, and gives you the
12 job, your common sense tells you that interviewer -- in this
13 case, Mr. Jenkins -- knew exactly what the deal was. Except in
14 this case, he didn't bother to conduct any interviews. He just
15 handed out the badge after a lunch.

16 Now, you also heard some arguments that, well, he
17 wasn't really trying to conceal the bribes, that he was a
18 politician, that's what they do, and he was really doing it for
19 the benefit of the donors. Think about that. He's telling you
20 that donors didn't want their names to appear on the campaign
21 finance reports, and that's why he wanted, you know, them to
22 give money to his brother, to other people, to whomever. He's
23 the elected official who is required to file these campaign
24 finance reports. He's concerned about anonymous donors? He
25 admitted to you on the stand he's done the election countless

Rebuttal Argument by Ms. Peng

1 times. He knows exactly what needs to be reported. He's not
2 doing it because he's trying to help the donors not be
3 solicited for donations. He's doing it because he wants to
4 hide the bribe money. And so I want you to use your common
5 sense.

6 And you've also heard that, you know, he's the
7 sheriff. He can do whatever he wants. If he wanted a program
8 where nobody was trained, nobody had, you know, any
9 qualifications, that's okay. Okay. That's fine. He can do
10 that if he wants to. I mean, I don't want to talk about the
11 general order again. You've heard enough about that. But I
12 encourage you to go look at that general order, to look at the
13 Culpeper ordinances, things that Mr. Jenkins thinks does not
14 apply to him.

15 But also, I want you to look at the law. This
16 instruction number 45. And it tells you it's not a defense
17 that the official action was actually lawful. That's what
18 we've been saying all along. The crime is the exchange. He
19 could have appointed any auxiliary deputy he wants. He could
20 appoint anyone he wants. That's true, right? But the reason
21 it's unlawful is that he can't appoint them because they gave
22 him money, and he agreed to appoint them because he gave them
23 money -- they gave him money. That's what is the crime that's
24 being alleged here.

25 And so when we look at this, right, and he says, I

Rebuttal Argument by Ms. Peng

1 want you to keep that in mind, right, all this stuff about what
2 he can do, what he cannot do, it doesn't matter if he did it in
3 exchange for a bribe. But the reason why you heard so much
4 about lack of training, no vetting whatsoever -- the reason why
5 you heard that evidence is because that's a strong evidence
6 that he took the money only as a bribe. Because if he had a
7 real program, maybe he could have said -- come up with some way
8 why it was legitimate. But because he had no real program, the
9 only program he had was the cash for bribes program, right?
10 And you heard defense say, he did see value in those people
11 that he deputized. The value he saw was the cash and the
12 checks that they brought.

13 And this is what the jury instruction also tells you.
14 If you find beyond a reasonable doubt that a public official
15 solicited or received a thing of value at least in part in
16 exchange for the performance of an official action, it makes no
17 difference that the public official may have had another lawful
18 motive for soliciting or accepting the thing of value. So all
19 the stuff you heard about a political agenda, about he could
20 have done anything, those are distractions because it doesn't
21 matter if he might have had other motives if he also had the
22 motive of doing it in exchange for a bribe.

23 Now, I want to -- the last thing I think I'll talk to
24 you about is Mr. Jenkins, right, and what he said and what he
25 didn't say. And you heard Mr. Andonian say, well, he said he

Rebuttal Argument by Ms. Peng

1 never took a bribe. And he said, you know, he wants to sleep
2 at night, right? He said basically that he's not guilty. I
3 submit to you that saying that you're not -- you did not commit
4 a crime does not actually mean you did not commit a crime. You
5 heard him testify yesterday. Now, he had the right to remain
6 silent. The burden is always on the prosecution. But if he
7 takes the stand, you're allowed to consider whether to believe
8 what he said, and you're the judge of his credibility. And I
9 submit to you that you got a front row seat to Scott Jenkins
10 and his spin, just like he would -- you heard -- you saw him do
11 just like what he said he would do in those recordings that you
12 heard. And let me show you a great example of that.

13 Mr. Andonian brought up the issue of the billboards,
14 right, remember this? So I asked him, you did not report any
15 of the contributions you gave on your campaign finance reports?
16 And then -- I'm sorry, this is on direct, right? He says --
17 sorry, on cross. Then he says, he gave no in-kind
18 contributions -- referring to Rahim -- that weren't reported.
19 He gave items that were unrelated to a campaign. So I tried to
20 lock him down on this and I asked him, so your testimony
21 is here -- here is that you do not have to report those items
22 because they were not related to your campaign? None. I know
23 of none. That's what he said yesterday. And then remember I
24 show him this exhibit, Exhibit 120. What is Exhibit 120? It
25 says, Reelect Sheriff Scott Jenkins. That was the billboard

Rebuttal Argument by Ms. Peng

1 that Rahim gave him. So then I asked him, your testimony is
2 that this billboard Rick Rahim paid for was not in fact related
3 to your campaign? What does he say then? No, that's not my
4 testimony. That is related to the campaign, and it should have
5 been reported because that's campaign material. I was talking
6 about the fliers and knives. Right? And then I ask him, well,
7 that wasn't reported, was it? Then he does what he told you he
8 was going to do. He shifts the blame -- he cashes in on his
9 feasible deniability to Bernie Feaganes or David or whoever is
10 responsible for that. I mean, I had nothing to do with it.
11 Right? What else does Exhibit 120 show you? This is a text
12 message between him and Rahim. How many more billboards to go?
13 And then Scott Jenkins replies, can't possibly thank you
14 enough.

15 He spins a tale until he's confronted with undeniable
16 facts. He agreed with me that if it's on a recording, you
17 can't spin it. But ladies and gentlemen, you saw him try to do
18 that right there from that witness stand. He tried to even
19 spin the recordings of his own voice, the text messages he
20 sent, the undeniable admissions of guilt. Remember when I
21 asked him about that recording, the one that you've heard
22 several times now, the one where he talks about the Rahim
23 transaction. He says, one hand scratches the other. Remember
24 that? I think perhaps he meant either one hand washes the
25 other, or I'll scratch your back and you scratch mine, or

Rebuttal Argument by Ms. Peng

1 something of that nature. And I asked him, hey, that means
2 pretty much *quid pro quo*, right? He says no, because *quid pro*
3 *quo* means something illegal. That's not what I meant. He
4 thinks if he doesn't say the words out loud, there is no crime.
5 He thinks if he says, I didn't do that, or I didn't commit the
6 crime, or I didn't think it was illegal, there is no crime.
7 This is a man so confident in his abilities to create spin, he
8 sat there and repeatedly tried to defend those fake -- those
9 obviously fake gun transactions, and his counsel just tried to
10 do it again on his behalf. He was asked multiple times during
11 his direct examination: Why didn't you just amend that
12 campaign finance report? And his answer, you heard him again
13 this morning, was, well, then I could be politically attacked
14 if I make the amendment. Ask yourselves: Does it make any
15 sense that he thinks that he could be attacked by his political
16 opponents for not amending a campaign finance report, but then
17 he thinks he won't be attacked for making up wholly fake gun
18 transactions? It doesn't make any sense, because it's a lie.
19 I mean, he thinks -- he pointed to those guns and he talked
20 about those guns. Hey, look, there were four real guns. Okay.
21 Does that mean that the transactions were real? No. Nobody
22 bought any guns. Nobody agreed to buy any guns. Even Kevin
23 Rychlik, you heard on the recording when he suggested it was
24 laughing about it because it was so preposterous. He couldn't
25 answer my question. Nobody got guns, right? I tried to ask

Rebuttal Argument by Ms. Peng

1 him several times. And this was the explanation he gave, an
2 explanation he gave this morning. Right? He thinks that
3 because after the fact he tried to create some fake gun
4 transactions, somehow that it makes the bribes okay. That's
5 not how it works, right?

6 Here's the real reason. Here's the real reason why
7 he did not want to report those cash transactions. You've seen
8 this chart already. The four guns were tied to those four last
9 bribe payers. Look at the dates of when they first met
10 Jenkins, when they took the oath, and what they paid. He
11 didn't want to report that publicly, because you see for the
12 last four bribe payers the same day that they met him, they got
13 sworn in, that cash for badge, cash for badge, it's all right
14 there. That's why he didn't want to report this. That's why
15 he was desperate to concoct the gun transactions, because if
16 the public had seen this, they would know that he was engaged
17 in bribery. They would know that they were defrauding him --
18 defrauding them of their -- of his honest services, which he
19 took an oath to do.

20 Members of the jury, you've seen the evidence. He's
21 told you enough half-truths that might have thrown off a member
22 of the public, because as he told you, he's an experienced
23 politician. He knows how to spin a good story. But you're not
24 a regular member of the public anymore. You've been a member
25 of this jury, and you've seen the evidence, the consistent

Continued Charge to the Jury

1 testimony and multiple witnesses, the texts and the recordings
2 in Mr. Jenkins's own words, the campaign finance reports, that
3 he try as he might cannot deny. This man is the textbook
4 definition of a dirty cop, a corrupt politician. He cheapened
5 and disrespected the badge he wore, a badge that's supposed to
6 stand for something. His oath to uphold the law and tell the
7 truth, he didn't do that. And he tried to get away with it.
8 He tried to get away with it in front of you. But you have the
9 evidence. So don't let him get away with it. Hold him
10 accountable. Thank you.

11 THE COURT: Thank you, Ms. Peng.

12 CONTINUED CHARGE TO THE JURY

13 THE COURT: Ladies and gentlemen, the case is almost
14 yours. In just a few minutes, it'll be time for you to retire
15 to the jury room to begin your deliberations. In conducting
16 your deliberations and returning your verdict, there are
17 certain rules that you must follow. I shall list those for you
18 now.

19 First, when you go to the jury room, you must select
20 one of your members as your foreperson. That person will
21 preside over your discussions and speak for you here in court.

22 Second, it is your duty, as jurors, to discuss this
23 case with one another in the jury room. You should try to
24 reach agreement if you can do so without sacrificing your
25 individual judgment, because a verdict, whether guilty or not

Continued Charge to the Jury

1 guilty, must be unanimous. Each of you must make your own
2 conscientious decision, but only after you've considered all
3 the evidence, discussed it fully with your fellow jurors, and
4 listened to the views of your fellow jurors. Do not be afraid
5 to change your opinion if the discussion persuades you that you
6 should, but do not come to a decision simply because other
7 jurors think it is right, or simply to reach a verdict.

8 Third, during your deliberations, you must not
9 communicate with or provide any information to anyone else by
10 any means about this case. You may not use any electronic
11 device, media, including cell phones. You may not access
12 through any means the internet, any internet service, any text
13 or instant messaging service, any internet chat room, blog, or
14 website such as Facebook, LinkedIn, YouTube, X, and all those
15 different social media opportunities to communicate with
16 anyone -- to communicate to anyone any information about this
17 case, or to conduct any research about this case until I then
18 accept your verdict.

19 You can only discuss the case in the jury room with
20 your fellow jurors during deliberations. I will also need
21 to -- I will also need you to inform me through a note to the
22 court security officer if you become aware of another juror's
23 violation of these instructions.

24 The reason why you may not use electronic means to
25 investigate or communicate about the case is because it is

Continued Charge to the Jury

1 important that you decide the case based solely on the evidence
2 presented in this courtroom. Information on the internet or
3 available through social media might be wrong, incomplete, or
4 inaccurate. You are only permitted to discuss the case with
5 your fellow jurors during deliberations because they have seen
6 and they have heard the same evidence of you -- as you. In our
7 judicial system, it is important that you're not influenced by
8 anything or anyone outside of this courtroom; otherwise your
9 decision may be based upon information known only to you and
10 not by your fellow jurors or to the parties in this case. This
11 would unfairly and adversely impact the judicial process.

12 Fourth, if you need to communicate with me during
13 your deliberations, you may send a note to me through the court
14 security officer, signed by one or more of your jurors. I will
15 respond as soon as possible either in writing or orally in open
16 court. Remember that you should not tell anyone, including me,
17 how your votes stand numerically.

18 Fifth, if the defendant is found guilty, the sentence
19 to be imposed is my responsibility. You may not consider
20 punishment in any way in deciding whether the government has
21 proved its case beyond a reasonable doubt.

22 Six, your verdict must be based solely on the
23 evidence and on the law that I have given to you in my
24 instructions. The verdict must be unanimous. Nothing I have
25 said or done is intended to suggest what your verdict should

Continued Charge to the Jury

1 be. That is entirely for you to decide.

2 Finally, a verdict form is simply written notice of a
3 decision that you reach in this case. You will take the
4 verdict form with you. And I'm going to go over it here in
5 just a second. You will take the verdict form with you to the
6 jury room, and when each of you has agreed upon the verdict,
7 your foreperson will fill in the verdict form, they will sign
8 it and date it, and advise the court security officer that
9 you're ready to return to the courtroom.

10 If one of you needs to step out of the jury room for
11 any reason, your deliberations must cease. Deliberations must
12 take place only while all members of the jury are present. Do
13 not reveal your verdict until such time as you're discharged
14 unless otherwise directed by me. After you've reached a
15 verdict, you're not required to talk to anybody about the case
16 unless the Court orders otherwise.

17 So let me explain to you the verdict form. And we
18 have a notebook -- Ms. Brown will have it -- that has the jury
19 instructions in it. And in the front pocket is going to be
20 this verdict form. So it says this: *In the United States of*
21 *America v. Scott Howard Jenkins* -- the verdict form -- we the
22 jury unanimously find as follows. As to Count One -- and we're
23 going to go all through each of the 12 counts. As to the
24 charge that Scott Howard Jenkins conspired with at least one
25 other person to commit bribery concerning programs receiving

Continued Charge to the Jury

1 federal funds or honest services or wire fraud in violation of
2 Title 18 United States Code, Section 371, we find the defendant
3 not guilty, or guilty. Put a checkmark or X, whatever you
4 want, in whichever line you believe.

5 You have some further instructions after that. If
6 you found the defendant guilty as to Count One, you must answer
7 the following additional question. If you find the defendant
8 not guilty as to Count One, you skip this next question here
9 and go down to Count Two. So the next question would be: We
10 unanimously find the defendant conspired to commit the
11 following offenses against the United States and check all that
12 apply; in other words, as to conspiracy, you have to indicate
13 what unanimously agreed if you found him guilty of conspiracy,
14 as to whether it's federal programs bribery, honest services
15 mail fraud, honest services wire fraud, any one or all.

16 You then proceed to Count Two. As to the charge that
17 the defendant, Scott Howard Jenkins, committed honest services
18 mail fraud in violation of 18 United States Code, Section 1341
19 and 1346, we find the defendant not guilty, or guilty.

20 You then proceed to Count Three. Count Three
21 provides that as to the charge the defendant Scott Howard
22 Jenkins committed honest services wire fraud in violation of 18
23 United States Code, Section 1343 and 1346, related to the text
24 message sent from defendant Rick Rahim on or about July 7
25 charged in the superseding indictment, we find the defendant

Continued Charge to the Jury

1 not guilty, or guilty.

2 Then you proceed to Count Four. Count Four provides
3 that as to the charge that the defendant Scott Howard Jenkins
4 committed honest services wire fraud in violation of Title 18
5 United States Code, Section 1343 and 1346 related to the text
6 message from the defendant to Kevin Rychlik on or about January
7 4, 2023 charged in the superseding indictment, we find the
8 defendant not guilty, or guilty.

9 Count Five is as to the charge that the defendant,
10 Scott Howard Jenkins, committed honest services wire fraud in
11 violation of 18 United States Code, Section 1343 and 1346
12 related to the check deposit on October 7, 2022, charged in the
13 superseding indictment, we find the defendant not guilty, or
14 guilty.

15 As it relates to Six through Twelve -- and I'm going
16 to read them to you -- but these are all the same charge
17 relating to different persons. As to the charge that the
18 defendant, Scott Howard Jenkins, committed bribery concerning
19 programs receiving federal funds in violation of 18 United
20 States Code, Section 666(a)(1)(B) with respect to Rick Rahim,
21 we find the defendant guilty, or not guilty.

22 As to the charge -- Count Seven is as to the charge
23 that Scott Howard Jenkins committed bribery concerning programs
24 receiving federal funds in violation of 18 United States Code,
25 Section 666(a)(1)(B) with respect to Fred Gumbinner, we find

Continued Charge to the Jury

1 the defendant not guilty, or guilty.

2 Count Eight is as to the charge the defendant Scott
3 Howard Jenkins committed bribery concerning programs receiving
4 federal funds in violation of 18 United States Code, Section
5 666(a)(1)(B) with respect to Jim Metcalf, we find the defendant
6 guilty, or not guilty.

7 Count Nine provides that as to the charge that Scott
8 Howard Jenkins committed bribery concerning a program receiving
9 federal funds in violation of 18 United States Code, Section
10 666(a)(1)(B) with respect to Thomas Cooper we find the
11 defendant not guilty, or guilty.

12 Count Ten is as to the charge the defendant, Scott
13 Howard Jenkins, committed bribery concerning programs receiving
14 federal funds in violation of 18 United States Code, Section
15 666(a)(1)(B) with respect to Undercover Agent 1, Jerry McKee,
16 we find the defendant guilty -- not guilty, or guilty.

17 And as to Count Eleven as to the charge the
18 defendant, Scott Howard Jenkins, committed bribery concerning
19 programs receiving federal funds in violation of 18 United
20 States Code, Section 666(a)(1)(B) with respect to Undercover
21 Agent 2, that is Mike, we find the defendant not guilty, or
22 guilty.

23 And Count Twelve is as to the charge the defendant,
24 Scott Howard Jenkins, committed bribery concerning a program
25 receiving federal funds in violation of 18 United States Code,

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1 Section 666(a)(1)(B) with respect to Philip Howell we find the
2 defendant not guilty, or guilty.

3 After you've completed the entire form, your
4 foreperson will sign it, and then they'll date it, and then let
5 the court security officer know right outside that you've
6 completed your deliberations and you're ready to come back to
7 the courtroom.

8 You all are now the captain of the ship. We will
9 send all this back to you. I know Ms. Brown was in there a
10 little bit earlier making sure the technology works so that you
11 can pull the exhibits up and be able to see them. She'll make
12 sure you know how to work all of that. And one of your first
13 questions may be, how late do we stay? We are here on you
14 all's schedule at this point in time. It's 4:30. I was going
15 to let you all deliberate, and we'll see where you are as we
16 need to as to whether we get dinner and we bring it in, as to
17 whether we come back tomorrow. But let's go for a while and
18 then we'll see where we are.

19 All right. So with that, we will release the jury to
20 begin -- and Ms. Brown will come in and tell you when you can
21 start your deliberations.

22 And if I could have Ms. Patrizia and Ms. Dowdy stay
23 with me for just one second, please.

24 (*Jury out, 4:36 p.m.*)

25 THE COURT: You all can have a seat. Ms. Patrizia

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1 and Ms. Dowdy, the law only permits 12 persons to deliberate.
2 You probably counted around the room. We have 14. We always
3 in a criminal case -- we always have alternates. We had three
4 alternates in this particular case. We lost one of our jurors
5 the first day, and we had to -- had to use one of the other
6 alternates. Without alternates, we would frequently be unable
7 to try criminal cases, because once you lose a juror, you can't
8 go any further if you have less than 12 jurors. And so it is
9 incredibly important for the role that you all have served as
10 being alternates here. And I want to thank you. I know that I
11 have taken you away from your family, your jobs, your daily
12 life. You have been here on time. You have been here with a
13 smile on your face. I've paid attention to all of you all.
14 You have paid attention and you've been a part of a fantastic
15 jury. But you're alternates. But your service is not done
16 yet. And you're saying what in the world do you mean?

17 So until we reach a verdict, you may still be needed.
18 If someone becomes ill or is unable to complete their service,
19 we'll need to call you back. We're not going to ask you to
20 stay here. We're going to get your cell phone numbers, and you
21 can go about your daily affairs. Just keep your cell phone
22 with you. As soon as we have a verdict, we will let you know.
23 But until we have a verdict, I'm going to ask you to continue
24 to abide by the rules that I've always asked you to abide by up
25 to this point, and that is, have no discussions with anyone

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1 about the case, no discussions with anyone -- you can tell your
2 family members that you're an alternate, but I can't talk about
3 it at this point. And once we have a verdict, then you'll be
4 released from those discussions. Don't do any research. Don't
5 catch up on the news about this case until there's a verdict at
6 all as well. But I want to thank you truly from the bottom of
7 my heart with respect to -- and as well as all the members of
8 the Western District of Virginia, and frankly all the citizens
9 of the Western District for the incredibly valuable service
10 that you've provided, because without having alternates, we
11 could not have tried this case. And so it's a very, very
12 important and valuable role. So with that -- I can't let you
13 go back to the jury room. I know you have some things back
14 there. If you can let the court security officers know where
15 your things are, and then Ms. Melvin is going to get you all's
16 cell phone numbers, and then we'll let you all be released. So
17 I want to thank you, thank you, very much for everything you've
18 done. Thank you. We'll release you all at this point.

19 (*Alternate jurors released.*)

20 THE COURT: You all please have a seat. Let's see if
21 we can't -- are you all ready to talk about the forfeiture
22 instructions at this point?

23 MR. CALEB: We can, yeah.

24 THE COURT: Okay. Let's go ahead and do that. Can
25 we -- I'm going to let Ms. Brown go back to the back and get

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1 the jury organized.

2 So I've provided you all -- I don't have -- these
3 instructions are not numbered by way of page or anything else.
4 And I simply set them up because it's easier to take away than
5 to -- it's quicker to take away than it is to add. Right now
6 it assumes a verdict on all 12 counts. Obviously, if there's a
7 not guilty verdict on all counts, then the jury is dismissed
8 and there are no forfeiture instructions. If there's a verdict
9 on any one count, the case will go forward as to forfeiture as
10 to that count -- and all those counts.

11 So you all take a minute and read -- are you all
12 reading the verdict form at this point? Yeah, you all take
13 your time.

14 (Pause.)

15 THE COURT: You all let me know when you're ready to
16 discuss.

17 (Pause.)

18 MS. SMITH: Thank you, Your Honor. We're ready
19 whenever the Court is ready.

20 THE COURT: All right. I had the first -- we'll just
21 go through them in order. It begins with members of the jury,
22 you must now render special verdicts concerning property the
23 government has alleged is subject to forfeiture of the United
24 States.

25 Any objection from the government?

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1 MS. SMITH: No, Your Honor.

2 THE COURT: How about from the defendant?

3 MR. CALEB: No, Your Honor.

4 THE COURT: Second instruction defines forfeiture.

5 Any objection from the government?

6 MS. SMITH: No, Your Honor.

7 THE COURT: Defendant?

8 MR. CALEB: No objection.

9 THE COURT: Third instruction begins with Section
10 981(a)(1)(C) of the United States Code.

11 Any objection from the government?

12 MS. SMITH: The one thing I would just like to bring
13 up -- and it's what we were looking at with the special verdict
14 form -- and I realize that the superseding indictment and the
15 forfeiture allegation lays out all of the counts should they
16 return a verdict on Counts One through Twelve. When looking at
17 it, we think that the funds are most traceable to Counts One
18 through Five, and then Counts Eight and Nine, because these
19 have to do with the two checks from Mr. Metcalf and Mr. Cooper.
20 So we would be proceeding under Counts One through Five and
21 then Eight through Nine. So the only edit I would make would
22 be alleged in Counts One through Five and then Eight and Nine.

23 THE COURT: And the same would be true on the first
24 instruction as well. The second paragraph, derived or
25 constituting the proceeds of offenses charged in Counts One

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1 through Five and Eight through Twelve.

2 MS. SMITH: Just Eight and Nine, Your Honor. Those
3 are --

4 THE COURT: Eight and Nine. Excuse me.

5 MS. SMITH: Thank you. And I'm sorry I didn't catch
6 that in instruction 1.

7 THE COURT: Okay. And I presume no objection from
8 the defendant's standpoint as it relates to that, Mr. Caleb?

9 MR. CALEB: No objection.

10 THE COURT: All right. As to the instruction -- when
11 I use the term proceeds of mail or wire fraud or proceeds of
12 bribery, any objection from the government?

13 MS. SMITH: No objection, Your Honor.

14 THE COURT: From the defendant?

15 MR. CALEB: No objection.

16 THE COURT: The instruction, while deliberating, you
17 should consider all the evidence presented during the post
18 verdict proceeding and the trial.

19 Any objection from the government.

20 MS. SMITH: No, Your Honor.

21 THE COURT: From the defendant?

22 MR. CALEB: No objection.

23 THE COURT: Next instruction, I instruct you that
24 your previous findings the defendant is guilty of the
25 violations set forth -- and I'll just again change One through

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1 Five and Counts Eight and Nine -- are finally conclusive. Any
2 objection from the government?

3 MS. SMITH: No, Your Honor.

4 THE COURT: From the defendant?

5 MR. CALEB: No objection.

6 THE COURT: And then the next instruction is, in
7 deliberating and deciding your verdict regarding forfeiture, I
8 instruct you the government need only prove by a preponderance
9 of the evidence.

10 Any objection from the government?

11 MS. SMITH: No, Your Honor.

12 THE COURT: From the defendant?

13 MR. CALEB: No objection.

14 THE COURT: Next instruction, you should not consider
15 what might happen to the funds in determining whether the funds
16 are subject to forfeiture.

17 Any objection from the government?

18 MS. SMITH: No, Your Honor.

19 THE COURT: From the defendant?

20 MR. CALEB: No objection.

21 THE COURT: And then the final instruction is a
22 special verdict form has been prepared for your use.

23 Any objection from the government?

24 MS. SMITH: No, Your Honor.

25 THE COURT: From the defendant?

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1 MR. CALEB: No objection.

2 THE COURT: All right. And then on the verdict form,
3 I'll change in the first paragraph where it says Counts One
4 through Twelve, I'll do Counts One through Five and Counts
5 Eight and Nine, and make the change to remove Counts Six,
6 Seven, Ten, Eleven, and Twelve, and obviously anything else
7 that would need to be removed depending upon what the jury's
8 verdict is.

9 Any objection from the government?

10 MS. SMITH: No objection, Your Honor. The only other
11 edit we had -- and I think it goes to each count. It says, for
12 Count One do you unanimously find by a preponderance of the
13 evidence that the following property. I think we need to add
14 in preponderance of the evidence, but otherwise there's no
15 objection to the verdict form with the edits you've already
16 mentioned.

17 THE COURT: And I think that that looks like that
18 will carry through on all of those counts that are going to
19 remain. Looks like we just -- we need to add preponderance of
20 the evidence.

21 MS. SMITH: Thank you, Your Honor. That's correct.

22 THE COURT: With those edits, Mr. Caleb, any
23 objection to the verdict form?

24 MR. CALEB: Just one other. To be consistent with
25 the original verdict form, I think we're requesting no before

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1 yes.

2 THE COURT: Okay. I think that's right. We'll make
3 that change as well. And just so that I am familiar -- so we
4 don't have this debate in front of the jury when they come
5 back, if there is a guilty verdict, do you all want to make any
6 closings to them? I know the agreement -- not the agreement --
7 but the government is satisfied that there is sufficient
8 evidence already in the record that they can make it without
9 providing any more evidence. Do you want to have an argument
10 with the government -- I mean with the jury?

11 MS. SMITH: Your Honor, I would just like to speak to
12 them for a very few minutes just to kind of explain. This is
13 kind of a foreign concept.

14 THE COURT: Sure.

15 MS. SMITH: But otherwise, I don't believe we're
16 going to put on any other evidence even though we're entitled
17 to.

18 THE COURT: And I presume, Mr. Caleb, do it just like
19 any other closings, government, defendant, government gets a
20 rebuttal?

21 MR. CALEB: I'm not sure that we will have one,
22 but --

23 THE COURT: You may -- right. But you'll have the
24 opportunity.

25 MR. CALEB: The opportunity, yes.

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1 THE COURT: Yes. Absolutely. Okay. We'll do that.

2 If they decide to stay tonight and they come back
3 late, we may have a judgment call. I presume if they've
4 decided to stay late tonight, they're going to want to go ahead
5 and go back and get it all done so they don't come back, but
6 we'll see. I'll make these revisions. I'll e-mail them out to
7 you all promptly so that you'll have them. And if you all can
8 just look at them fairly quickly and get back to us if there's
9 any issues with respect to the instructions. I'll go ahead and
10 number them so you'll know exactly what they're going to look
11 like. And if there's any issue, e-mail me back right away so
12 that we can deal with it while the jury is out deliberating,
13 okay?

14 Anything else from the government's perspective?

15 MS. SMITH: No, Your Honor.

16 THE COURT: How about from the defendant's
17 perspective?

18 MR. ANDONIAN: No, Your Honor.

19 THE COURT: Before we break, let me just take a
20 moment of personal privilege. I always do this while the jury
21 is out, because when a jury comes back, everyone is thinking
22 about anything but this. But I want to speak primarily to the
23 parties through the record, and first of all, thank the counsel
24 for the way in which you've conducted this case. All the
25 parties have been incredibly well acquitted by the quality of

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1 the legal representation that is here. The hallmark of -- and
2 we started last Wednesday with this, and it's been touched upon
3 as well during the closings -- but the hallmark of our legal
4 system, the hallmark of the rule of law is that when there is a
5 dispute, it's resolved here in the courtroom, and it's resolved
6 in an orderly fashion, and it's resolved between the parties
7 and with the benefit of legal counsel. And they've done
8 incredibly well in doing this.

9 It is -- I have no idea what the verdict is going to
10 be. I have no idea what the jury is going to do, but it's --
11 I'm well satisfied that the evidence came in so the jury can
12 make a decision, and it's a decision that the jury will make
13 based upon the evidence, not about the personalities of lawyers
14 or about any disputes with the lawyers. You all were fantastic
15 to work with. You're fantastic to -- the way in which it was
16 apparent that you worked with each other so that the case could
17 come together. And I want to thank you for that, because it
18 makes the job of being a judge enjoyable when you have really
19 good lawyers that try really nice cases. You make the job
20 enjoyable. You don't make it easy, I can tell you that. But I
21 want to say that. And you know, I'll speak to the special
22 agents, they're the clients in the room, if you will, but you
23 know, pass it back to your SACs, pass it back to the U.S.
24 Attorney, however much longer he may be here.

25 And Mr. Jenkins, I'll speak to you, that the quality

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1 of legal representation was fantastic, and I want to thank
2 everyone for the way in which you've conducted yourselves.

3 However the case comes out, I wish everyone all the
4 best. I'll come down and greet the parties and counsel, and
5 then we'll wait for the verdict. Thank you.

6 MR. ANDONIAN: Your Honor, may we just ask,
7 logistically will we just -- will we get an e-mail, or --

8 THE COURT: Yeah, so make sure that Ms. Brown has
9 your cell phones. I think -- I know you all are across the
10 street. You all will probably be camped out at the U.S.
11 Attorney's office. And then we'll send you a text or phone
12 call as well and let you know. You know, the only reason I
13 would encourage you not to go back to the hotel is we get
14 questions. This is a jury that has not been afraid to ask
15 questions. So -- and I won't answer them at all, even if it's
16 "I can't answer that," without bringing counsel together on the
17 record, letting you know what the question was. So the further
18 away you are, the longer that takes.

19 MR. ANDONIAN: Very well, Your Honor.

20 THE COURT: Thank you very much.

21 (Recess.)

22 THE COURT: All right. Folks, we're back on the
23 record in *United States v. Jenkins*. Let the record reflect the
24 government is present by its counsel. The defendant likewise
25 is present by counsel. We have a question from the jury. The

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1 first thing that you all want to know is who signed it, and
2 that is none of them. So we don't know who the foreperson or
3 at least the writer may be. Dated today at 5:54. And I'm
4 going to let you all see this.

5 The video files aren't labeled and it's taking a long
6 time to find what we need. Is there a list of how they are
7 organized or some easier way to search them? We'd like
8 subtitles, if available, too. Can we see the court reporter's
9 notes of testimony?

10 So Kelly, can you hand this down to counsel to take a
11 look at it?

12 And I've got a couple of questions and a couple of
13 thoughts.

14 MR. CALEB: Your Honor, may we have a copy of the
15 note?

16 THE COURT: Yeah. Kelly, go ahead and scan this in
17 and print out copies.

18 We're going to print another copy of it, but we've
19 run out of paper, but that's okay. We'll get you -- any
20 thoughts from the government?

21 MS. CHOY: Yes, Your Honor. As to the request for
22 guidance on finding the video files, I think the descriptions
23 in the exhibit list are quite neutral. They just say the dates
24 and maybe the names of the speakers. And so --

25 THE COURT: At least what we have is -- simply says

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1 audio/video file or audio file and then the date.

2 MS. CHOY: So I think it would be appropriate to
3 provide that to the jurors.

4 Second, on the transcripts, the government would
5 propose that Your Honor read back the instruction about use of
6 transcripts.

7 And then third on the court reporter notes, I think
8 we could suggest the jury can ask for portions to be read back
9 to it, but we wouldn't provide those transcripts to the jury.

10 THE COURT: All right. Mr. Caleb, Mr. Andonian?

11 MR. ANDONIAN: Your Honor, we have no problem with
12 the exhibit list, with the descriptions going back. That seems
13 like it would be helpful for them. I think just --

14 THE COURT: Do you all have a clean copy? So here's
15 a little bit of the issue. Not all the exhibits were
16 admitted -- were offered. So what we could -- what I was
17 contemplating -- I don't mind sending the exhibit list. I
18 mean, I can either send the entire exhibit -- well, the problem
19 with sending the entire exhibit list is there's going to be
20 some descriptions on there of the exhibits that were not
21 admitted, right?

22 MS. CHOY: We'd be happy to prepare a revised list
23 with only the admitted exhibits, Your Honor. That would be
24 very quick.

25 MR. ANDONIAN: And I guess we would just want to

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1 double-check. We don't have any objection in principle to the
2 descriptions. We just would like an opportunity to
3 double-check the list. We would not want an unadmitted exhibit
4 description to go back and create questions.

5 THE COURT: Exactly. No, I don't mind that. I think
6 in the interim what I might do is advise them that we will
7 attempt to prepare a list of exhibits that have been admitted
8 for now. The audio and video files, to the extent admitted,
9 because they do have the exhibit numbers, are at G001 through
10 G00 -- I think it's 42 or 43. So they at least have that, and
11 they can see those are the audio/video files. Because it's
12 going to take you a while to prepare that and then for you all
13 to review it and confirm that that's what's on there. I'd like
14 Ms. Brown to be able to double-check it against her list as
15 well so that we know -- so that's going to take a hot minute as
16 well.

17 MR. ANDONIAN: Then Your Honor, with respect to the
18 other ones, I mean, we think, you know, either directing them
19 to the instruction or reading the instruction about subtitles
20 makes sense.

21 I guess with respect to reading the court reporter --
22 the transcript, I mean, I guess mechanically how would that
23 work? I mean, is that -- every time they want that, do we have
24 to be back? I mean, I just don't want to create a logistical
25 nightmare of, you know, 100 times they want to hear testimony

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1 back, and we have to come back up here for that to happen. I
2 don't know, I mean --

3 THE COURT: I mean, I think -- do you disagree that
4 they're entitled to ask to have certain testimony read back to
5 them? I've never had to review that -- look at that issue.

6 MR. ANDONIAN: I mean, it's always been my
7 understanding that their recollection controls as to what they
8 heard. I don't know that there is theoretically a problem with
9 them getting the actual testimony read back to them. Just --
10 this really is more of a question --

11 THE COURT: Logistical issue, right.

12 MR. ANDONIAN: Your Honor, if I could just add one
13 more --

14 THE COURT: Yes, sir.

15 MR. ANDONIAN: About the transcripts, I mean, I guess
16 the other issue -- I'm trying to figure out how to articulate
17 it. I mean, to the extent that there were a difference between
18 the transcript and the jurors' recollection of what was said
19 during the trial, I think it's my view that the jurors'
20 recollection would control. So I don't know if we're creating
21 an issue by allowing the transcripts to be brought into the mix
22 as opposed to just having them remember what was said.

23 THE COURT: I don't know the answer to the question.

24 Have you had to look at that issue, Ms. Choy?

25 MS. CHOY: I can't say I have a case cite for you,

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1 Your Honor. That was just sort of my general understanding.

2 THE COURT: Right. I'm going to give you all an
3 opportunity to look at it. We can always send another note
4 back to them. I don't want to say, hey, you can get whatever
5 testimony you want. I'm not worried about the logistics.
6 We'll figure that out. If they're entitled to it, they're
7 entitled to it, and we'll figure out the logistics. But I
8 don't want to say, hey, you can get it, and then we all go hit
9 Westlaw and come back and say, oops, just kidding, you don't
10 get to see that. So I'd rather look at it and be certain about
11 it, and send them a note back in 30, 45 minutes, or tomorrow
12 morning, and say, in follow-up to your question, to the extent
13 you want further testimony, you can.

14 And then -- is it 42 or 43, Kelly, the exhibit?

15 THE CLERK: 42.

16 THE COURT: 42, okay.

17 So here's what I propose as it relates to the first
18 question, and that is the video files. If possible, we will
19 provide a list of the admitted exhibits with the descriptions
20 as used by the parties. For now, the audio and video
21 recordings are located at G001 through G0042.

22 For the second question -- and that is the
23 subtitles -- all the instructions given by the Court are
24 important. Instruction number 21 provides guidance regarding
25 transcripts for audio and video recordings.

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1 And then the last one is, we're not able to provide
2 the court reporter -- because they asked for the court
3 reporter's notes of testimony. The court reporter's notes or a
4 transcript of testimony -- you must rely upon your memory of
5 the testimony of the witnesses, period, and then not go any
6 further.

7 MS. PENG: Your Honor, will the parties be able to
8 review a written copy of that note before it gets sent back?

9 THE COURT: Yeah, so you all have the note. And then
10 I'm going to write it out, and I'm going to read it to you, and
11 you all can -- because I'm going to write it out on here so it
12 will go back to them in one piece.

13 Does that -- it looks like you all are -- may have a
14 case, may not have a case?

15 MS. PENG: Well, Your Honor, I mean, I've had that
16 done before, but you know, I'm referencing the Ninth Circuit,
17 and there is like a model instruction there with commentary on
18 how to do this procedure. It's in your honest discretion after
19 discussion with the attorneys whether to allow read-back of
20 particular testimony.

21 THE COURT: And I don't disagree that that may be
22 where we are, but since there's a question that's being raised,
23 and I haven't had to look at it before, I don't want to answer
24 first and figure out later. I'd rather figure out first and
25 answer later, and for us to have a -- if you all want to send

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1 that over to us and send it to defense counsel as well, that
2 would be good.

3 Okay. I'll let you all see this. But I've numbered
4 these 1, 2, and 3.

5 One, if available, we will provide a list of the
6 admitted exhibits with the descriptions used by the parties.
7 For now, the audio and video recordings are located at G001
8 through G0042.

9 Two, all instructions of the Court are important;
10 however, instruction 21 provides guidance regarding transcripts
11 for audio and video recordings.

12 Three, we are not able to provide court reporter
13 notes or a transcript of testimony. You must rely upon your
14 memory of the testimony of the witnesses.

15 If that's suitable, I'll sign that and send it on
16 back to them.

17 Any objection to what I propose to send back?

18 MS. CHOY: On number three, Your Honor, if we are
19 going to have further discussion and potentially allow
20 read-back of transcripts, our preference would be that for now
21 we say we can't provide guidance at this time. That way we're
22 not telling them something different later.

23 THE COURT: What I'd like to do, if we -- I'd like to
24 be able to answer their question and say, at this time, we're
25 not able to provide the court reporter notes or a transcript of

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1 the testimony. You must rely upon your memory of the testimony
2 of the witnesses.

3 And just the short things that we're seeing, I'm
4 reticent because it looks like, one, what Ms. Curry-Ledbetter
5 has found and shown to me -- and I certainly don't mind
6 instructing the jury -- bringing them back in, you have to rely
7 primarily upon your -- but there's some decent authority that
8 suggests you've got to provide the entire transcript of that
9 particular witness's testimony. Certainly both sides would
10 have a chance to review it beforehand. We'd need to make sure
11 if there were any bench conferences those come out. And if you
12 provide only a portion, does each side get to offer something
13 so that it's made more complete, right, because if they want
14 something that the government likes, and the defendant wants to
15 make sure, well, don't forget such-and-such, or vice versa,
16 what do we do? So I've got to think about it as to what we
17 would do in that regard. So that's the reason I'd like to put,
18 at this time.

19 MS. CHOY: That would be fine, Your Honor. Thank
20 you.

21 THE COURT: Mr. Andonian, Mr. Caleb?

22 MR. ANDONIAN: That's fine, Your Honor.

23 THE COURT: The other thing I'm going to do, because
24 you all probably struggled with my handwriting as it was, we're
25 going to -- can you type this out -- we'll print out their

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1 question and then staple them together and send them back, and
2 just type it as the Court's response to jury question.

3 While we have you all here, it is 6:30. It seems to
4 me we have three different options that we can address with the
5 jury. Do nothing. Go in there and ask them if they want
6 dinner, not give them, you know, an option of going home. Or
7 go in there and say, you know, do you all want to keep going?
8 Do you want us to order dinner? You know, what do you all want
9 to do, and just leave it up to them. My experience with
10 respect to when a jury gets dinner, you know you're going to be
11 here at least until the food arrives and they have a chance to
12 eat if they want to go home. It matters not to me. I think
13 Ms. Smith is the only one that is going to sleep in her own bed
14 tonight, as well as the agents. So it doesn't matter to us.

15 Do you all have a preference?

16 MS. CHOY: We'd say offer them dinner.

17 MR. ANDONIAN: We have no problem offering them
18 dinner. I mean, it would be helpful -- I keep harping on
19 this -- to know somewhat about what their plans are, if only so
20 we --

21 THE COURT: Can get dinner if you need to?

22 MR. ANDONIAN: -- can eat.

23 THE COURT: Exactly. Okay. Well, so what we can do,
24 if you want, is once we have this written out, we can actually
25 bring them in, and I'll read them the answers back, and then at

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1 the same time I'll tell them that, you know, like I said,
2 you're the captain of the ship. We'll stay here as late as you
3 want. We'll order dinner. You know, we'll do whatever you
4 want. Just let us know. So we'll just bring them back in for
5 that purpose, if you like.

6 (Discussion off the record.)

7 MS. SMITH: Your Honor, so we right now have an
8 exhibit list together. Ms. Fastenau is putting in the
9 speakers, but we can at least send the preliminary list so that
10 Ms. Brown can start checking it, and defense counsel can start
11 checking it as well. I don't know if you then just want to
12 send your note back to the jury so that they can keep going
13 and --

14 THE COURT: Yeah, that's going to take a little bit
15 of time.

16 You don't have to staple them together. Just give
17 those back to them so they can look at my response. And print
18 it out for both sides, please, Kelly.

19 Is the response okay?

20 MS. CHOY: Yes, Your Honor.

21 MR. ANDONIAN: Yes, Your Honor.

22 THE COURT: All right. So I'll go ahead and sign
23 that. Let's bring the jury in, if we can.

24 (Discussion off the record.)

25 THE COURT: Ms. Smith, are you providing the

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1 additional -- speakers?

2 MS. SMITH: We're going to -- we're adding in the
3 speakers right now to help aid the jury, but I wanted to at
4 least be able to double-check the exhibits.

5 THE COURT: This is currently the way it's in Box.

6 THE CLERK: Because I just used your description in
7 my description.

8 MS. SMITH: Oh, okay. So the files are saved as they
9 are written on the exhibit list?

10 THE COURT: Correct. And the exhibits go in with the
11 names, with these descriptions as well.

12 (*Jury in, 6:45 p.m.*)

13 THE COURT: All right. Ladies and gentlemen, first
14 of all, you all please have a seat.

15 Let the record reflect the jury is present and
16 seated.

17 I got your question. Thank you very much for sending
18 that over. Let me read to you the response, and I'm going to
19 send it back to you as well, that if available, we will provide
20 a list of admitted exhibits with the descriptions used by the
21 parties. For now the audio and video recordings are located
22 generally at G001 through G0042. And I think what you have on
23 Box is, for the most part, the descriptions that you're going
24 to get back. Whether we can add the names of the speakers in,
25 I'm not sure yet at this point in time. So that's the answer

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1 to the first question.

2 The answer to the second question is, all
3 instructions of the Court that we provided earlier are
4 important. However, instruction 21 provides guidance regarding
5 transcripts for audio and video recordings.

6 The answer to question number 3 is at this time we're
7 not able to provide the court reporter notes or any transcript
8 of testimony. You must rely upon your memory of the testimony
9 of the witnesses.

10 And so that's my response to each of your questions.
11 I'll send it back -- this back with you.

12 With that, ladies and gentlemen, let me -- like I
13 said, you are the captain of the ship. And so we're going to
14 be guided by what you all want to do. It is about 6:45. You
15 have various different options available. Stay as long as you
16 like, that's always one option. We can order dinner in, if you
17 like, and stay as long as you like. You can keep going a
18 little bit longer and make a decision about dinner a little bit
19 later. It's 6:45. If you don't think you're going to be --
20 well, I don't want to put any caveats on how late you stay. If
21 you want to come back tomorrow, I understand that as well. I
22 don't need you all to have that discussion amongst yourselves
23 here in the courtroom in front of everybody, but I want you all
24 to be thinking about that, because -- and then we'll be guided
25 by whatever your decision is in that regard.

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1 All right. So with that, we'll send the answers to
2 the question back to you, and we'll allow the jury to be
3 adjourned.

4 (*Jury out, 6:48 p.m.*)

5 THE COURT: You all please have a seat. Actually,
6 the easiest thing to do, maybe -- we can double-check it from
7 Ms. Fastenau. So what we did in Box is as the government
8 uploaded their exhibits into Box, it has, I presume, these
9 exact same descriptions on it that were on the exhibit list.
10 When an exhibit gets admitted, Ms. Brown just takes it from the
11 government's box, drags it over into the admitted box, so it
12 carries with it the same description. So the audio files and
13 video files are simply audio recording dated such-and-such,
14 video recording dated such-and-such. And the -- of course,
15 then, the other exhibits have a little bit more description so
16 you can kind of tell what they are. And then whether we can
17 add a description next to this that -- you know, for video
18 recording dated such-and-such date, hyphen, and then just list
19 the speakers on it. I don't think any other description would
20 be appropriate at all, but just simply list the speakers, you
21 know, Scott Jenkins and Kevin Rychlik, or whatever it may be.
22 And so if that can be put together, and there is no objection
23 to that, you know, we can address that. That's going to take a
24 hot minute to get together, would be my guess.

25 MS. SMITH: We are almost done, Your Honor. She

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1 works very fast.

2 THE COURT: But to be fair, the defendants will
3 probably want to double-check it, including maybe even
4 listening to that to make sure those are the folks.
5 Completely -- it's not distrust, but just to make sure the math
6 checks.

7 MS. SMITH: Absolutely.

8 THE COURT: All right. I think we're being told
9 we're going to get another note. So we can wait. We can go
10 off the record, and you all just --

11 (Discussion off the record.)

12 THE COURT: We have reached a verdict. So with that,
13 are we ready for the jury?

14 Actually, before we do that, the forfeiture
15 instructions, we mailed them to you all with the updates.

16 MS. SMITH: Everything looked fine for the
17 government.

18 MR. CALEB: Yes.

19 THE COURT: Okay. All right. So let's print those
20 out.

21 Also, it is my practice to poll the jury regardless
22 of whether there's a request. So you all don't need to ask for
23 the jury to be polled. So I'll poll them.

24 All right. Are we ready for the jury? All right.
25 Let's bring the jury in.

Verdict

1 (Jury in, 7:02 p.m.)

2 THE COURT: Ladies and gentlemen, you all please have
3 a seat.

4 All right. I'm advised that you have reached a
5 verdict; is that right? Pass your verdict form up to the CSO.

6 I'll ask the clerk to publish the verdict.

7 THE CLERK: Ladies and gentlemen, is this your
8 verdict?

9 JURORS: Yes.

10 THE CLERK: In the United States District Court for
11 the Western District of Virginia, Charlottesville Division,
12 *United States of America v. Scott Howard Jenkins*, case number
13 3:23-cr-11, we the jury unanimously find as follows: Count
14 One, as to the charge that the defendant, Scott Howard Jenkins,
15 conspired with at least one other person to commit bribery
16 concerning programs receiving federal funds or honest services
17 mail or wire fraud in violation of Title 18 United States Code,
18 Section 371, we find the defendant guilty. We unanimously find
19 that defendant conspired to commit the following offenses
20 against the United States: Federal programs bribery, honest
21 services mail fraud, honest services wire fraud.

22 Count Two: As to the charge that defendant Scott
23 Howard Jenkins committed honest services mail fraud in
24 violation of Title 18 United States Code, Sections 1341 and
25 1346, we find the defendant guilty.

Verdict

1 Count Three: As to the charge that defendant Scott
2 Howard Jenkins committed honest services wire fraud in
3 violation of Title 18 United States Code, Sections 1343 and
4 1346 related to the text message sent from defendant Rick Rahim
5 on or about July 7th, 2020 charged in the superseding
6 indictment, we find the defendant guilty.

7 Count Four: As to the charge that defendant Scott
8 Howard Jenkins committed honest services wire fraud in
9 violation of Title 18 United States Code, Sections 1343 and
10 1346 related to the text message sent from defendant to Kevin
11 Rychlik on or about January 4th, 2023 charged in the
12 superseding indictment, we find the defendant guilty.

13 Count Five: As to the charge that the defendant,
14 Scott Howard Jenkins, committed honest services wire fraud in
15 violation of Title 18 United States Code, Sections 1343 and
16 1346 related to the check deposit on or about October 7th, 2022
17 charged in the superseding indictment, we find the defendant
18 guilty.

19 Count Six: As to the charge that defendant Scott
20 Howard Jenkins committed bribery concerning programs receiving
21 federal funds in violation of Title 18, United States Code,
22 Sections 666(a)(1)(B) with respect to Rick Rahim, we find the
23 defendant guilty.

24 Count Seven: As to the charge that the defendant,
25 Scott Howard Jenkins, committed bribery concerning programs

Verdict

1 receiving federal funds in violation of Title 18 United States
2 Code, Section 666(a)(1)(B) with respect to Fredric Gumbinner,
3 we find the defendant guilty.

4 Count Eight: As to the charge that the defendant,
5 Scott Howard Jenkins, committed bribery concerning programs
6 receiving federal funds in violation of Title 18 United States
7 Code, Section 666(a)(1)(B) with respect to James Metcalf, we
8 find the defendant guilty.

9 Count Nine: As to the charge that defendant, Scott
10 Howard Jenkins, committed bribery concerning programs receiving
11 federal funds in violation of Title 18 United States Code,
12 Section 666(a)(1)(B) with respect to Thomas Cooper, we find the
13 defendant guilty.

14 Count Ten: As to the charge that the defendant,
15 Scott Howard Jenkins, committed bribery concerning programs
16 receiving federal funds in violation of Title 18 United States
17 Code, Section 666(a)(1)(B) with respect to Undercover Agent
18 Jerry McKee, we find the defendant guilty.

19 Count Eleven: As to the charge that the defendant,
20 Scott Howard Jenkins, committed bribery concerning programs
21 receiving federal funds in violation of Title 18 United States
22 Code, Section 666(a)(1)(B) with respect to Undercover Agent 2,
23 Mike, we find the defendant guilty.

24 Count Twelve: As to the charge that the defendant,
25 Scott Howard Jenkins, committed bribery concerning programs

Verdict

1 receiving federal funds in violation of Title 18 United States
2 Code, Section 666(a)(1)(B) with respect to Philip Howell, we
3 find the defendant guilty.

4 Signed, Diana Walker, foreperson, on December 18th,
5 2024.

6 THE COURT: I'll ask the clerk to poll the jury.

7 THE CLERK: Ladies and gentlemen, as I call your
8 name, please answer yes or no if the verdict just read is your
9 true verdict.

10 Diana Veronica Walker?

11 FEMALE JUROR: Yes.

12 THE CLERK: Shawn Holden Mitchell?

13 MALE JUROR: Yes.

14 THE CLERK: Kelly Marie Rhoden?

15 FEMALE JUROR: Yes.

16 THE CLERK: Susan Thomas?

17 FEMALE JUROR: Yes.

18 THE CLERK: Bobbie Swaringen Relken?

19 FEMALE JUROR: Yes.

20 THE CLERK: Cody Daniel Bryant?

21 MALE JUROR: Yes.

22 THE CLERK: Christine Crute Estes?

23 FEMALE JUROR: Yes.

24 THE CLERK: Dora Shelton Smith?

25 FEMALE JUROR: Yes.

Forfeiture Charge to the Jury

1 THE CLERK: Emily Hobgood Walker?

2 FEMALE JUROR: Yes.

3 THE CLERK: Sherrie Lynn Frazier?

4 FEMALE JUROR: Yes.

5 THE CLERK: Lisa Michelle Choi?

6 FEMALE JUROR: Yes.

7 THE CLERK: Margaret Conway Short?

8 FEMALE JUROR: Yes.

9 FORFEITURE CHARGE TO THE JURY

10 THE COURT: All right. Ladies and gentlemen, first
11 of all, thank you very much for your work. There's one other
12 thing that I must ask of you, though. The government has
13 alleged that certain property is subject to forfeiture,
14 specifically the \$10,000 that was seized from Blue Ridge Bank.
15 You will be required now to render a special verdict relating
16 to that issue. I have some instructions for you as well.

17 Members of the jury, you must now render special
18 verdicts concerning property that the government has alleged is
19 subject to forfeiture to the United States. The United States
20 Code provides that all property derived from or constituting
21 the proceeds of the offenses charged in Counts One through Five
22 and Counts Eight and Nine is subject to forfeiture. As to the
23 item of property for which the government seeks forfeiture, you
24 must find whether that property is connected to the underlying
25 crime. I'll define those terms for you in a moment.

Forfeiture Charge to the Jury

1 The property the government is seeking to forfeit is
2 \$10,000 in funds seized from a Blue Ridge Bank account ending
3 in 8133 on January 31, 2023, which I will refer to as "the
4 funds."

5 Instruction number 2: Forfeiture means that as part
6 of the penalty for engaging in criminal activity, a defendant
7 loses any ownership or interest he has or claims to have in
8 certain property.

9 Instruction number 3: Section 981(a)(1)(C) of the
10 United States Code provides in part that whoever is convicted
11 of mail or wire fraud and/or bribery shall forfeit to the
12 United States any property, real or personal, which constitutes
13 or is derived from proceeds traceable to the offense. The
14 government alleges that the funds are forfeitable because they
15 are traceable to the offenses alleged in Counts One through
16 Five and Counts Eight and Nine.

17 Instruction number 4: When I use the term proceeds
18 of mail or wire fraud, or proceeds of bribery, this term
19 includes any monies or other property that the defendant
20 obtained directly or indirectly as a result of his actions. To
21 determine if the funds are forfeitable, you will be asked to
22 return a special verdict of forfeiture on whether there is a
23 nexus between the offenses and the funds. In the instance of a
24 proceeds of forfeiture case such as this, there is a nexus if
25 the funds constitutes or derives from proceeds traceable to the

Forfeiture Charge to the Jury

1 offenses. Proceeds satisfy the nexus test if a person would
2 not have the money but for the criminal offense. This means
3 proceeds include the total amount of money obtained by the
4 defendant as a result of his actions. There is no set-off for
5 any cost or expenses the defendant incurred, and the term
6 proceeds is not limited to the net gain or profit realized from
7 the offense.

8 Instruction number 5: While deliberating, you should
9 consider all the evidence presented during the post-verdict
10 proceeding and the trial regardless of who offered it. There
11 is going to be no additional evidence. You have all the
12 evidence in the record.

13 All instructions previously given to you concerning
14 duties of the jury, your consideration of the evidence, and
15 what is and is not evidence, the credibility of the witnesses,
16 expert testimony, your duty to deliberate together and your
17 duty to base your verdict solely on the evidence without
18 prejudice, bias, or sympathy, and the necessity of a unanimous
19 verdict will continue to apply during these deliberations.

20 Instruction number 6: I instruct you that your
21 previously findings that the defendant is guilty of the
22 violations set forth in Counts One through Five and Counts
23 Eight and Nine are final, conclusive, and binding. Because you
24 are bound by your previous findings that the defendant is
25 guilty, I direct you not to discuss in your forfeiture

Forfeiture Charge to the Jury

1 deliberations whether the defendant is guilty or not guilty of
2 any violations.

3 Instruction number 7: In deliberating and deciding
4 your verdict regarding forfeiture, I instruct you that the
5 government need only prove by a preponderance of the evidence
6 whether there is a connection or nexus between the offense and
7 the funds. The government is not required to prove the nexus
8 beyond a reasonable doubt. Preponderance of the evidence means
9 that a fact is more likely true than not true. The government
10 must prove that it is more likely than not that the funds
11 constitute or derive from proceeds traceable to the offenses.
12 In other words, preponderance of the evidence means that the
13 government's evidence, when considered and compared with that
14 opposed to it, has more convincing force and produces in your
15 minds a belief that there is a nexus between the funds and the
16 defendant's crimes.

17 Instruction number 8: You should not consider what
18 might happen to the funds in determining whether the funds are
19 subject to forfeiture. You should also disregard any claims
20 that other persons may have to the funds. The Court will
21 account for any interest that other persons may have in the
22 funds, or whether forfeiture of the funds would constitute
23 excessive punishment at a later time. Your sole concern now is
24 to determine whether the funds constitute or derive from
25 proceeds traceable to violations.

Forfeiture Charge to the Jury

1 Instruction number 9: A special verdict form has
2 been prepared for your use. The special verdict form lists the
3 funds that the government asserts are subject to forfeiture.
4 You may answer by simply putting an X or checkmark in the space
5 provided next to the words yes or no. Depending upon your
6 answer, there is a follow-up question you must answer. You
7 must reach a unanimous verdict as to each question on the
8 special verdict form. The foreperson must then sign and date
9 the special verdict form. You will see that the special
10 verdict form asks you to consider separately whether the funds
11 are subject to forfeiture on more than one basis. Even if you
12 find the funds are subject to forfeiture for more than one
13 reason, that does not mean that the government will receive
14 forfeited property twice. It is important, however, that you
15 indicate on the special verdict form all bases on which you
16 find the funds are subject to forfeiture.

17 Ladies and gentlemen, here's the way that we're going
18 to proceed. I know you may feel I pulled a fast one on you in
19 saying you have a little bit more work to do before you go
20 home. But I'm going to allow the parties to address you in
21 closing argument style. I'm going to explain to you the
22 verdict form. And the same thing that I told you before you
23 reached your verdict is going to remain the same. You are the
24 captain of the ship. If you all want to discuss this tonight,
25 fine. We're here for you. If you want to discuss it for a

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1 while, and if you can't reach a decision, and come back
2 tomorrow, fine, we're here for you. If you want to decide to
3 go home and come back in the morning to resolve it, fine, we're
4 here for you. But I wanted to make sure that this issue got in
5 front of you tonight as well.

6 So with that, Ms. Smith, does the government have
7 anything to address the jury about?

8 MS. SMITH: Just briefly, Your Honor.

9 THE COURT: Yes, ma'am. Come around.

10 MS. SMITH: Good evening. I know everyone is tired.
11 It's been a long day. I just want to give you guys just a few
12 points to keep in mind. What the government is seeking to
13 forfeit is that \$10,000 related to the two checks that were
14 deposited into Scott Jenkins's Blue Ridge account. As you
15 heard Special Agent Scott Medearis testify to, the Blue Ridge
16 Bank account ending in 8133 was the bank account for the Scott
17 Jenkins For Sheriff account. Specifically, after receiving
18 each \$5,000 check from James Metcalf and Tom Cooper, Scott
19 Jenkins deposited into that account those two checks. As you
20 heard the special agent testify to, there were no significant
21 deposits after those two checks were deposited, and then
22 subsequently the FBI seized those \$10,000. So those are the
23 two sources of funds that we're asking you to look at and
24 decide whether or not it's traceable to the numerous counts
25 that you just found Scott Jenkins guilty of.

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1 Thank you.

2 THE COURT: Thank you, Ms. Smith.

3 Mr. Andonian?

4 MR. ANDONIAN: We don't have anything to add, Your
5 Honor.

6 THE COURT: All right. Very well.

7 Ladies and gentlemen, let me explain to you your
8 verdict form that you'll go back with.

9 Again, in the matter of *United States of America v.*
10 *Scott Howard Jenkins*, this is the verdict form -- jury verdict
11 form with regard to forfeiture, and it reads as follows.

12 We, the jury, on the above captioned case present the
13 following unanimous verdict: The United States has in its
14 custody \$10,000 from the Scott Jenkins For Sheriff bank account
15 with an account number ending in 8133 that was seized by
16 federal law enforcement agencies as a result of the
17 investigation into the allegations of Counts One through Five
18 and Counts Eight and Nine for which the jury returns a verdict
19 of guilty in the superseding indictment.

20 And these are the questions you'll need to answer.
21 One, for Count One, do you unanimously find by a preponderance
22 of the evidence that the following property constitutes
23 property traceable to the gross receipts obtained directly or
24 indirectly: A, \$10,000 in U.S. currency seized from the Blue
25 Ridge Bank account ending 8133 on or about January 31, 2023, no

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1 or yes. And then if you find that it was lesser or greater
2 amount, please state that amount.

3 And if they don't put an amount in, it's the full
4 \$10,000; do you all agree, counsel?

5 MS. SMITH: Yes, Your Honor.

6 THE COURT: Mr. Andonian? Is that a yes?

7 MR. ANDONIAN: Yes.

8 THE COURT: All right. Very well.

9 So if you don't put an amount in, it's the full
10 \$10,000. If you put an amount in, if you believe that it's a
11 different amount than \$10,000.

12 For Count Two, you unanimously find by a
13 preponderance of the evidence that the following property
14 constitutes property traceable to the gross receipts obtained
15 directly or indirectly: A, \$10,000 in U.S. currency seized
16 from the Blue Ridge Bank account ending in 8133 on or about
17 January 31, 2023, no or yes. And then if you find that a
18 lesser or greater amount, please state that amount and fill
19 that in.

20 Number 3 -- for Count Three, do you unanimously find
21 by a preponderance of the evidence that the following property
22 constitutes property traceable to the gross receipts obtained
23 directly or indirectly: A, \$10,000 in U.S. currency seized
24 from Blue Ridge Bank account ending in 8133 on or about January
25 31, 2023, no or yes. And then if you find a lesser or greater

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1 amount, fill that number in.

2 As to Count Four, do you unanimously find by a
3 preponderance of the evidence that the following property
4 constitutes property traceable to the gross receipts obtained
5 directly or indirectly -- and again, it's the same \$10,000 from
6 the same bank account, from the Blue Ridge Bank account ending
7 in 8133, no or yes. If you find a different or greater amount.

8 As to Count Five, it's the same thing. Do you
9 unanimously find by a preponderance of the evidence that the
10 following property constitutes property traceable to the gross
11 proceeds, same bank account, no or yes. And then if you find a
12 different amount, fill that in.

13 And as to Count -- question 6 and question 7 are for
14 Counts Eight and Nine. It's the same question, same bank
15 account, but you need to answer it for each one of these
16 counts.

17 After you get done, please sign and return this to
18 the courtroom, and we're going to make -- Campbell, can you
19 bring this up to where the date is on the same page? We're
20 going to print this out to where we get the date and signature
21 on the same page, but then we'll send that -- send the verdict
22 form back with you.

23 With that, ladies and gentlemen, all the instructions
24 that I gave to you immediately before you began your
25 deliberations this evening remain. You already have your

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1 foreperson. But again, conduct your deliberations in a
2 businesslike manner, paying due respect for everyone's opinions
3 and so forth.

4 With that, I will let you all adjourn. Again, you
5 all make the decision about when you want to tackle this
6 question, tonight into the evening, or tomorrow. We are here
7 at your convenience.

8 So with that, we'll excuse the jury. And we will
9 send the verdict form in, in a second.

10 (*Jury out, 7:21 p.m.*)

11 THE COURT: So as it relates to the jury verdict, any
12 motions at this time?

13 MR. ANDONIAN: No, Your Honor.

14 THE COURT: Okay. Very well. So Mr. Jenkins will
15 remain on bond, the exact same conditions, Mr. Jenkins, that
16 were previously set when we were together before trial.

17 Ms. Smith?

18 MS. SMITH: Your Honor, the government does have a
19 motion under 18 U.S.C. 3143.

20 THE COURT: Okay.

21 MS. SMITH: We would move for his remand at this
22 time.

23 THE COURT: All right. I'm going to -- given where
24 we presently are, I'm going to leave Mr. Jenkins on bond. I'll
25 pull up 3143. I do believe that -- so I give you the right

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1 standards --

2 MS. SMITH: And Your Honor, if I could just be heard?

3 THE COURT: Sure.

4 MS. SMITH: The posture has changed in this case.

5 Mr. Jenkins is no longer accused of crimes. He has been found
6 guilty, and he's been found guilty on all 12 counts, and he is
7 facing significant jail time. If you look at 18 U.S.C. 3143,
8 it says the Court shall remand unless it is found by clear and
9 convincing evidence that he is not a flight risk and no danger
10 to others. And I think it's important to note that we have
11 more information than we did back on June -- back in June of
12 2023 when he was allowed to be out on bond, and even after Your
13 Honor continued to have him on bond back in November of this
14 year. First we have him not showing up to his original court
15 date. He basically excused himself from his own federal jury
16 trial.

17 THE COURT: But he let everybody know where he was.
18 He didn't follow the order of the Court to be here, but he let
19 everybody know where he was. He was not fleeing.

20 MS. SMITH: Your Honor, he was not fleeing, but he
21 was -- he's supposed to show up for court, and he did not show
22 up for court. And we had no communication until after hours
23 even as to what was going on with his medical status.

24 Additionally, he continued to have these purported
25 medical issues. And if you recall the testimony from that UVA

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1 Culpeper emergency room doctor, he said both in his reports and
2 on the stand that he thought that the defendant was
3 malingering. And so I do think you have some concerns about
4 delay and whether or not he's being truthful with the Court,
5 and with even medical personnel.

6 And additionally, we have the defendant continuing to
7 obstruct in this case. He took the stand, and he was supposed
8 to tell the truth, and I think the Court has plenty of
9 information that he has lied under oath. And the jury has
10 found that he lied under oath, because they returned a swift
11 and decisive verdict in this case. They did not believe a word
12 that he said, and I think that shows that he cannot follow the
13 Court's orders, and that he thinks he can continue to get away
14 with things. He was supposed to testify truthfully under oath,
15 and instead, he took that stand and for hours told falsehoods.
16 So the government has serious concerns about his ability to
17 continue to follow the Court's orders. And I think the statute
18 is quite clear that he shall be remanded, and that we ask that
19 you do that at this time.

20 THE COURT: Mr. Andonian, Mr. Caleb, do you want to
21 address that?

22 MR. ANDONIAN: Yes, Your Honor.

23 Your Honor, we do believe that there is clear and
24 convincing evidence that he is not a risk of flight and not a
25 danger to anyone in the community. He has been following every

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1 condition of release since he has been put on release back in
2 the beginning or the middle of 2023.

3 The health episodes, I don't -- I'm happy to address
4 it. I mean, Mr. Jenkins did what he could. He clearly was
5 having a health episode. He got treatment promptly after that.
6 He's been following all of the directions of his treating
7 physician. He's been here every day of this trial. He has not
8 been late. He hasn't missed a date. There's absolutely
9 nothing to suggest that he poses a danger. He doesn't even
10 have a passport, I'll represent to the Court. So there's just
11 simply no -- I mean, he's lived in Culpeper his entire life.
12 Based on the record that you have before you, we would submit
13 there's clear and convincing evidence that he is not a flight
14 risk, and he is not a danger to anyone in the community.

15 THE COURT: All right. Thank you.

16 I'll give you the final word, Ms. Smith.

17 MS. SMITH: Your Honor, I just would point out that
18 it has changed now. He is no longer just accused. He's been
19 found guilty. And I think under the statute and what we've
20 seen in this courtroom it's appropriate to remand him.

21 THE COURT: So 3143, Ms. Smith does properly indicate
22 that a person who has been found guilty and is awaiting
23 sentencing shall be remanded unless several conditions may
24 exist. One is that under any applicable guideline promulgated
25 under 994 doesn't recommend a term of imprisonment. I don't

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1 think that's the issue here. And two, is unless a judicial
2 officer finds by clear and convincing evidence that the person
3 is not likely to flee or pose a danger to the safety of any
4 other person or the community if released under 3142.

5 So again, the same standards that the Court
6 considers, though with different burdens at this point in time.

7 So with respect to a flight risk, since released on
8 bond in this case before it was assigned to me, my
9 understanding is that Mr. Jenkins complied in all respects with
10 respect to his conditions of bond. There may have been some to
11 and fro-ing with respect to getting the case off the ground,
12 getting counsel and so forth, but none of that has been before
13 me in any great respect. At the time of trial, Mr. Jenkins --
14 in November -- Mr. Jenkins certainly didn't come here, but he
15 called his probation officer before he went to the ER, as I
16 recall in my conversations with Ms. Salazar. We knew where he
17 was. There was -- it was frustrating to get the case to trial.
18 We set him on conditions of release at a hearing that we had in
19 early -- late November, I believe, and -- many of which -- I
20 think actually put Mr. Jenkins on a different health regimen
21 than perhaps he had experienced for quite some time. I will
22 note that during the trial here over the last I guess six days
23 of trial, I haven't noticed any apparent anxiety, any
24 apparent -- any of the conditions that were what delayed us.
25 And so he appears to be -- and my conversations with

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1 Ms. Salazar have been he's complied in all respects with his
2 terms and conditions of release.

3 As it relates to whether he is a danger to the
4 community, the only evidence that's cited is that there is
5 obstruction based upon his testimony. I've got to think about
6 that, whether that sentencing enhancement will otherwise apply,
7 whether the government seeks it, which apparently it will. But
8 I can't make that conclusion at this point in time. It's
9 something that I have to decide. And there is no indication
10 that Mr. Jenkins is -- has shown any violent tendencies or has
11 threatened any witnesses at all.

12 I am going to revisit one thing, however. And that
13 is, it's my understanding, Mr. Jenkins, that all of the guns
14 that you owned are out of your house; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. And they're either with your
17 brother or others; is that right?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. All right. Your brother is not
20 before the Court. I think he's in the courtroom. And that is
21 -- you are not to possess a firearm, period. Any -- and if you
22 go to your brother's house -- and I'm going to impose this upon
23 you because you're the one in front of the Court -- that you
24 need to assure with your brother that any firearms that he has
25 in the house need to be in a safe, in a safe for which you

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1 don't have either the combination or access to the key.

2 Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So I'm going to add that condition as
5 well. I'm going to deny the government's motion for immediate
6 release, but I'm going to add that condition. I'm going to
7 leave in place that you continue to receive the medical
8 treatment, that you continue to go to the counseling that I
9 directed in the past as well, and that the medical
10 authorizations that have been provided continue to remain in
11 place.

12 So with that, I'm going to set a sentencing date.

13 (Discussion off the record.)

14 THE COURT: So I'm going to set sentencing for March
15 the 31st, if that is available on you all's calendars.

16 MS. CHOY: Just a moment.

17 That works for the government, Your Honor.

18 MR. ANDONIAN: Your Honor, that will work for us. If
19 we could do it in the afternoon, that would be ideal
20 for scheduling purposes.

21 THE COURT: Kelly, can you -- do you have access to
22 -- how about 1:00?

23 MR. ANDONIAN: That's fine.

24 THE COURT: Is that enough time for you all to get
25 down here?

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1 MS. CHOY: Yes, Your Honor.

2 THE COURT: Okay. I'll set sentencing for
3 Mr. Jenkins for March the 31st at 1:00. That will be the only
4 notice that you get. We'll put notice on the docket, but
5 you're not going to be served with a separate notice as well.

6 All right. Anything else we need to address at this
7 point in time, other than wait for the jury on the forfeiture
8 issue?

9 MS. CHOY: Nothing from the government, Your Honor.

10 THE COURT: Anything from the defendant?

11 MR. ANDONIAN: Nothing from us, Your Honor.

12 THE COURT: All right. Very well. We'll stand in
13 recess and await the jury.

14 (Recess.)

15 THE COURT: You all please have a seat.

16 Back on the record in the matter of *United States v.*
17 *Jenkins*. The government is present by its counsel. The
18 defendant likewise is present by counsel. I'm advised that we
19 have a verdict as it relates to the forfeiture.

20 Are you all ready for the jury?

21 MS. SMITH: Yes, Your Honor.

22 THE COURT: All right. Let's bring the jury in.

23 (*Jury in, 7:37 p.m.*)

24 THE COURT: Ladies and gentlemen, please have a seat.

25 All right. I am advised that we have a verdict on

Forfeiture Verdict

1 the forfeiture issue; is that correct, Madam Foreperson?

2 FEMALE JUROR: Yes.

3 THE COURT: If you could hand the verdict form up,
4 I'd be much obliged.

5 All right. I'll ask the clerk to call the verdict.

6 THE CLERK: Ladies and gentlemen, is this your
7 verdict?

8 JURORS: Yes.

9 THE CLERK: In the United States District Court for
10 the Western District of Virginia, Charlottesville Division,
11 *United States of America v. Scott Howard Jenkins*, case number
12 3:23-cr-11: We the jury in the above captioned case present
13 the following unanimous verdict. The United States has in its
14 custody \$10,000 from Scott Jenkins For Sheriff bank account
15 with account number ending in 8133 that was seized by federal
16 law enforcement agencies as a result of the investigation into
17 the allegations of Counts One through Five, and Counts Eight
18 and Nine for which the jury returned a verdict of guilty of the
19 superseding indictment.

20 For Count One, do you unanimously find by the
21 preponderance of the evidence that the following property
22 constitutes property traceable to the gross receipts obtained
23 directly or indirectly: A, \$10,000 in U.S. currency seized
24 from a Blue Ridge Bank account ending in 8133 on or about
25 January 31st, 2023? Yes.

Forfeiture Verdict

1 For Count Two, do you unanimously find by a
2 preponderance of the evidence that the following property
3 constitutes property traceable to the gross receipts obtained
4 directly or indirectly: A, \$10,000 in U.S. currency seized
5 from a Blue Ridge Bank account ending in 8133 on or about
6 January 31st, 2023? Yes.

7 For Count Three, do you unanimously find by a
8 preponderance of the evidence that the following property
9 constitutes property traceable to the gross receipts obtained
10 directly or indirectly: A, \$10,000 in U.S. currency seized
11 from a Blue Ridge Bank account ending in 8133 on or about
12 January 31st, 2023? Yes.

13 For Count Four, do you unanimously find by a
14 preponderance of the evidence that the following property
15 constitutes property traceable to the gross receipts obtained,
16 directly or indirectly: A, \$10,000 in U.S. currency seized
17 from Blue Ridge Bank account ending in 8133 on or about January
18 31st, 2023? Yes.

19 For Count Five, do you unanimously find by a
20 preponderance of the evidence that the following property
21 constitutes property traceable to the gross receipts obtained
22 directly or indirectly: A, \$10,000 in U.S. currency seized
23 from the Blue Ridge Bank account ending in 8133 on or about
24 January 31st, 2023? Yes.

25 For Count Eight, do you unanimously find by a

Forfeiture Verdict

1 preponderance of the evidence that the following property
2 constitutes property traceable to the gross receipts obtained
3 directly or indirectly: A, \$10,000 in U.S. currency seized
4 from a Blue Ridge Bank account ending in 8133 on or about
5 January 31st, 2023? Yes.

6 For Count Nine, do you unanimously find by a
7 preponderance of the evidence that the following property
8 constitutes property traceable to the gross receipts obtained
9 directly or indirectly: A, \$10,000 in U.S. currency seized
10 from a Blue Ridge Bank account ending in 8133 on or about
11 January 31st, 2023? Yes.

12 Signed by foreperson Diana Walker on December 18th,
13 2024.

14 THE COURT: All right. I'll ask you to poll the
15 jury, please.

16 THE CLERK: Ladies and gentlemen, as I call your
17 name, please answer yes or no, if the verdict just read is your
18 true verdict.

19 Diana Veronica Walker?

20 FEMALE JUROR: Yes.

21 THE CLERK: Shawn Holden Mitchell?

22 MALE JUROR: Yes.

23 THE CLERK: Kelly Marie Rhoden?

24 FEMALE JUROR: Yes.

25 THE CLERK: Susan Thomas?

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1 FEMALE JUROR: Yes.

2 THE CLERK: Bobbie Swaringen Relken?

3 FEMALE JUROR: Yes.

4 THE CLERK: Cody Daniel Bryant?

5 MALE JUROR: Yes.

6 THE CLERK: Christine Crute Estes?

7 FEMALE JUROR: Yes.

8 THE CLERK: Dora Shelton Smith?

9 FEMALE JUROR: Yes.

10 THE CLERK: Emily Hobgood Walker?

11 FEMALE JUROR: Yes.

12 THE CLERK: Sherrie Lynn Frazier?

13 FEMALE JUROR: Yes.

14 THE CLERK: Lisa Michelle Choi?

15 FEMALE JUROR: Yes.

16 THE CLERK: Margaret Conway Short?

17 FEMALE JUROR: Yes.

18 THE COURT: All right. Ladies and gentlemen, I don't
19 have anything else waiting for you this time. So let me just
20 start, though, by thanking you very much for the work that
21 you've done. As I indicated when we first met last Wednesday,
22 that one of the most important and highest civic duties that we
23 have as citizens is to sit as jurors, to be able to resolve
24 disputes, whether they relate to a criminal matter or a civil
25 matter as well. You all join a long line of folks since the

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1 dawn of our country who have stepped in the breach and resolved
2 disputes and handled matters, which is exactly where they
3 should be, by the people, rather than by the government. So I
4 want to thank you very much for the work that you've done. I
5 want to thank you on behalf of all the staff here. I want to
6 thank you on behalf of all the citizens of the Commonwealth,
7 and the Western District of Virginia as well, and also thank
8 you on behalf of the parties as well for your work. I know
9 that I've taken you away from your daily affairs. I've taken
10 you away from your job. I've taken you away from your family,
11 your friends, and the other things that you wanted to do over
12 the course of the past week, especially here in this busy, busy
13 time of the year. But I thank you for your dedicated work, for
14 being here on time, for being -- for paying very close
15 attention. I paid attention to you all during the course of
16 the trial, and without exception, you have all been tuned into
17 the testimony and paying close attention. So I very much
18 appreciate that.

19 I can't answer the question that was given to me
20 early on, and that is, does this mean you're done till March.
21 Ms. Melvin may be able to answer that, if you want to reach out
22 to her at a later point in time, but she'll let you know if
23 you're going to be still on the list or not.

24 Also note that the jury questionnaires -- I had a
25 question about this -- those were confidential when we sent

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1 them out. They remain confidential. Any information that's
2 contained in those can only be used for purposes of this case,
3 as well. So you all should all know that.

4 And as I indicated to you in my instructions right
5 before you deliberated, you're under no obligation to talk to
6 anybody about this case as well, unless you choose to do so, or
7 unless otherwise ordered by the Court. In all my time as a
8 judge, all my time as a lawyer, I've never seen -- I've never
9 been involved in a case where a judge has ordered jurors to
10 speak. So that's where we are on that.

11 With that, I know that it's getting late. Some of
12 you have quite a drive in front of you, so I'm not going to
13 belabor it any longer, but I do truly want to thank you, wish
14 you all safe travels, wish you happy holidays, and all the best
15 wishes that I can send with you.

16 So with that, I'll excuse the jury.

17 (*Jury out, 7:44 p.m.*)

18 THE COURT: All right. Ladies and gentlemen,
19 anything else we need to address from the government's
20 perspective?

21 MS. CHOY: No, Your Honor.

22 THE COURT: Anything else from the defendant's
23 perspective?

24 MR. ANDONIAN: No, Your Honor.

25 THE COURT: All right. Very well. I reiterate the

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1 comments that I made right after the closing and while the jury
2 went out. Thank you all for a very, very well-tried case.
3 Thank you for letting me be a part of it. Safe travels and
4 happy holidays to everyone. Thank you.

5 (Proceedings adjourned, 7:45 p.m.)

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1 C E R T I F I C A T E

2 I, Lisa M. Blair, RMR/CRR, Official Court Reporter for
3 the United States District Court for the Western District of
4 Virginia, appointed pursuant to the provisions of Title 28,
5 United States Code, Section 753, do hereby certify that the
6 foregoing is a correct transcript of the proceedings reported
7 by me using the stenotype reporting method in conjunction
8 with computer-aided transcription, and that same is a
9 true and correct transcript to the best of my ability and
10 understanding.

11 I further certify that the transcript fees and format
12 comply with those prescribed by the Court and the Judicial
13 Conference of the United States.

14 /s/ Lisa M. Blair

Date: December 19, 2024

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